

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Mechanics Lien Law

June 2006

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN September 30, 2006.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

This recommendation proposes a complete revision of the California mechanics lien law and associated construction remedies. The recommendation responds to a request from the Assembly Judiciary Committee that the Law Revision Commission provide the Legislature a comprehensive review of this area of law.

This recommendation does not propose radical changes to the operation of the existing construction law remedies. The recommendation simplifies, clarifies, organizes, and modernizes the existing statutes. The recommendation includes modest substantive improvements, but does so in a way that maintains the relative balance of interests among current stakeholders.

The Commission intends that this recommendation make the existing law more understandable and usable. That will establish a foundation on which the Legislature may build improvements in the future, if that appears appropriate.

This recommendation is made pursuant to authority of Resolution Chapter 1 of the Statutes of 2006.

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MECHANICS LIEN LAW

INTRODUCTION

1
2 This report recommends comprehensive revision of the California mechanics
3 lien law.

4 The recommendation derives from a 1999 request to the Law Revision
5 Commission from the Chair and Vice Chair of the Assembly Judiciary Committee
6 urging a Commission study of the mechanics lien law.¹ The letter noted that the
7 Judiciary Committee has heard and continues to hear numerous bills seeking to
8 amend, and amending, that law. As a result, the mechanics lien law has been
9 revised dozens of times since lien rights were added to the state Constitution.

10 We do not wish to impede the evolution of this important area of our law in any
11 way, but we do believe it would be helpful if the Commission would provide the
12 Legislature with a comprehensive review of this area of the law, making
13 suggestions for possible areas of reform and aiding the review of such proposals
14 in future legislative sessions. As you know, this subject area is complex and there
15 are many stakeholders with competing interests.

16 The letter noted the existing general authority of the Commission in this area,² and
17 suggested that the Commission prioritize the matter.

18 The Commission agreed to the request and commenced work on the study. This
19 recommendation represents the completion of that work; it is preceded by two
20 interim recommendations³ and a prospectus for reform.⁴ Consistent with the
21 Judiciary Committee's vision, the Commission intends that this recommendation
22 make the existing law more understandable and usable, establishing a foundation
23 on which the Legislature may make improvements in the future.

1. See Letter from Assembly Members Sheila James Kuehl (Chair) and Rod Pacheco (Vice Chair), to Nat Sterling (Executive Secretary, California Law Revision Commission), June 28, 1999 (attached to Commission Staff Memorandum 99-85 (available from the Commission, www.clrc.ca.gov)).

2. Historically, the Commission's calendar has included general authority to study the topics of real property law and creditors remedies law. The current authority is expressed in 2006 Cal. Stat. res. ch. 1.

3. See *The Double Payment Problem in Home Improvement Contracts*, 31 Cal. L. Revision Comm'n Reports 281 (2001) (not enacted), and *Stay of Mechanic's Lien Enforcement Pending Arbitration*, 31 Cal. L. Revision Comm'n Reports 333 (2001) (enacted as 2003 Cal. Stat. ch. 113).

4. See *Mechanic's Lien Law Reform*, 31 Cal. L. Revision Comm'n Reports 343 (2001).

1 The mechanics lien law applies to both private work and public works contracts.
2 However, the lien itself is unavailable for a public works contract — the principal
3 public works contract remedies are the stop notice and the payment bond.

4 Related construction contract remedies that are not part of the mechanics lien
5 law include the design professionals lien¹¹ and licensing remedies found in the
6 Contractors' State License Law.¹²

7 **Operation of Mechanics Lien Law**

8 Every state has a mechanics lien law. The laws all operate similarly. The law
9 gives the provider of labor or materials an enforceable lien on property to the
10 extent of the value of the labor or materials contributed. As a practical matter, a
11 lien is rarely enforced; the property owner is motivated to pay a legitimate lien
12 claimant rather than have the lien foreclosed and the property sold to satisfy the
13 lien.

14 Although the basic function and operation of the mechanics lien law is the same
15 around the country, the details of the statutes vary enormously. Variations include
16 the type of property subject to lien rights (public, private, quasi-public), persons
17 entitled to lien rights (contractors, subcontractors, sub-subcontractors, materials
18 suppliers, skilled versus unskilled laborers, design professionals), type of
19 ownership subject to lien rights (fee simple, leasehold), type of work subject to
20 lien rights (construction, alteration, landscaping), performance prerequisite to lien
21 rights (full performance, contractor in default), the extent of the lien (whether or
22 not limited by the amount of the prime contract), procedural prerequisites to
23 enforcement (preliminary notices, statutory deadlines for filing and foreclosure),
24 defenses (contractual waivers), and priorities among liens (including priorities
25 among mechanics lien claimants and between a mechanics lien and a construction
26 loan lien).

27 The drafters of the Uniform Construction Lien Act (1987) note the extraordinary
28 variety of mechanics lien laws from state to state. "In fact, variation among the
29 states may be greater in this area than in any other statutory area." They observe,
30 however, that despite the diversity, state laws deal with common issues and tend to
31 fall into a limited number of patterns on the major issues involved.

32 **HISTORY OF CALIFORNIA STATUTE**

33 **Constitution**

34 In California, the mechanics lien has a constitutional basis. Article XIV, Section
35 3, of the California Constitution provides:

11. Civ. Code §§ 3081.1-3081.10.

12. Bus. & Prof. Code §§ 7000-7191.

1 Mechanics, persons furnishing materials, artisans, and laborers of every class,
2 shall have a lien upon the property upon which they have bestowed labor or
3 furnished material for the value of such labor done and material furnished; and the
4 Legislature shall provide, by law, for the speedy and efficient enforcement of such
5 liens.

6 This provision has stood in the Constitution essentially unchanged since it was
7 added in 1879. It was amended in 1974 to substitute “persons furnishing
8 materials” for “materialmen”. It was moved to its current location in 1976.

9 **Legislative History**

10 The statutory history of the California mechanics lien law predates the
11 constitutional provision. California’s first Legislature enacted a rudimentary
12 mechanics lien statute in 1850.¹³ Section 1 of that act granted a lien to “master
13 builders, mechanics, lumber merchants, and all other persons performing labor or
14 furnishing materials” in constructing any building or wharf. Section 2 provided a
15 stop notice procedure whereby a “sub-contractor, journeyman, or laborer” could
16 garnish payments from the owner. Section 3 provided for recording and
17 commencement of an action to enforce the lien.

18 The California statute has been revised and recodified many times since. During
19 that process the law made its way from the general statutes into the Code of Civil
20 Procedure, and thence to the Civil Code. All told, since its codification in the 1872
21 Code of Civil Procedure, the mechanics lien law has been affected by more than
22 150 enacted bills.

23 Today’s mechanics lien law still contains language dating back to the 1872
24 codification and before. The 1951 and 1969 recodifications continued much of
25 the pre-existing language and were not intended to be substantive reforms.¹⁴ The
26 statute has been amended more than 70 times in the 35 years since the 1969
27 recodification.

28 This process has taken its toll on a body of law that one California Supreme
29 Court justice labeled “confused and confusing” nearly 90 years ago.¹⁵

30 **SUMMARY OF CALIFORNIA STATUTE**

31 Key features of the California mechanics lien law and its operation are
32 summarized below.¹⁶ The summary includes a discussion of policy considerations,

13. See Compiled Laws ch. 155.

14. See 1951 Cal. Stat. ch. 1159, § 5 (legislative intent as “only a formal revision of the law ... [not] an alteration in the public policy ... nor in the meaning or substance thereof”); 1969 Cal. Stat. ch. 1362, § 10 (legislative intent “to revise and restate ... shall not be construed to constitute a change in ... preexisting law”).

15. *Roystone Co. v. Darling*, 171 Cal. 526, 546, 154 P. 15 (1915) (Henshaw, J. concurring).

1 the mechanics lien, procedures for enforcement of the lien claim, the stop notice
2 right, and devices available to the owner and construction lender to protect against
3 the lien or stop notice.

4 **Policy Considerations**

5 A supplier of labor or materials to the construction of an improvement as a
6 practical matter has no opportunity to contract for a security interest to ensure
7 payment. The law creates a remedy for a contractor, supplier, or worker to secure
8 payment of the claim. The remedy is the mechanics lien, along with associated
9 stop notice and payment bond remedies.

10 The mechanics lien is unique among creditors remedies in California because of
11 its constitutional basis. For this reason, the law is liberally construed to ensure
12 maximum protection for a lien claimant.

13 The mechanics lien law attempts to strike a balance between the interest of the
14 claimant in getting paid and the interest of the owner in paying only once for the
15 same work. An unpaid contractor can assert a lien and, after a trial, force the
16 improved property to be sold at public auction, and apply the proceeds to pay the
17 debt. The lien law thus prevents the owner from being unjustly enriched by the
18 contractor's services without making payment.

19 The lien law is not always fair to an owner or developer. Because the lien right
20 extends to a lower tier lien claimant such as a subcontractor or supplier, the owner
21 may be in jeopardy of paying more than it bargained for to complete the project.
22 For example, the owner may have made a progress payment to the general
23 contractor for electrical work, but the general contractor may have used the money
24 for another purpose. Even though the owner has already paid for the electrical
25 work, the electrical subcontractor can assert a lien on the owner's property to
26 recover the amount not paid by the general contractor.

27 Much of the development of the mechanics lien law is an attempt to ensure
28 compensation of a lien claimant while at the same time protecting an owner from
29 undue exposure. The mechanics lien law contains a series of time deadlines and
30 procedural requirements. A claimant must comply with these requirements in
31 order to enforce the claim.

32 In recent years the Legislature has enacted prompt payment statutes. The statutes
33 impose a statutory penalty on an owner or the owner's contractor that is dilatory in
34 paying an amount due. The incentive to prompt payment may mitigate but does
35 not eliminate the need for the lien remedy.

36 **Mechanics Lien**

37 A mechanics lien gives a claimant a security interest in real property, similar to
38 that provided by a deed of trust or mortgage. It secures for a claimant a right to be

16. This summary is drawn from Acret, *A Brief Summary of Mechanics' Liens and Stop Notices*, in *Handling A Mechanics' Lien* (Cal. Cont. Ed. Bar 1993).

1 paid from funds generated by sale of the owner's property. A lien claimant that
2 complies with all steps necessary may foreclose the lien.

3 The mechanics lien is only as good as the owner's equity in the property. If the
4 owner's equity is absorbed by other liens, or by deeds of trust that have priority
5 over the mechanics lien claim, the mechanics lien may be worthless.

6 ***Property Subject to Lien***

7 The mechanics lien attaches to the work of improvement for which the claimant
8 provided work or material. A claimant cannot assert a lien on other property of the
9 owner not related to the work of improvement.

10 A mechanics lien applies only to a private work of improvement. There is no
11 lien right on property owned by the government. A claimant on a public work of
12 improvement is not without a remedy. On a state or local public work, an unpaid
13 subcontractor or supplier has stop notice and payment bond rights. On a federal
14 public work, an unpaid subcontractor or supplier has a right against the Miller Act
15 payment bond.

16 ***Persons Entitled To Claim Lien***

17 The class of persons entitled to claim a lien includes a contractor, subcontractor,
18 supplier, equipment lessor, architect, engineer, land surveyor, builder, trucker,
19 laborer, and any other person that furnishes labor or material used in a work of
20 improvement. To be entitled to claim a lien the claimant must contribute work or
21 material to a "work of improvement" (a project intended permanently to improve
22 specific property) at the request of the owner, the owner's agent, or the owner's
23 statutory agent. The owner's contractor on the project is considered to be the
24 owner's agent.

25 While the list of lien claimants is expansive, not every person that furnishes
26 labor or material that ultimately is used in a work of improvement is entitled to
27 claim a lien. A supplier to a general contractor or subcontractor has a lien right,
28 but a supplier to another supplier does not. For example, a sawmill that furnishes
29 lumber to a lumber yard is not entitled to a lien. In addition, the labor or material
30 provided must contribute to a permanent improvement of the property. Thus, a
31 landscape contractor that supplies and installs plants has a lien right, but one that
32 simply maintains existing landscaping does not.

33 An unlicensed contractor is barred from enforcing a mechanics lien to recover
34 the amount due for the work.

35 A right to assert a mechanics lien does not generally exist until visible work
36 begins on a work of improvement. However, California has a separate lien statute
37 that allows an architect, engineer, or surveyor to recover for services provided
38 before a work of improvement has commenced.

1 ***Effect of Lien***

2 A mechanics lien attaches to the work of improvement, and to the land beneath
3 the improvement “together with a convenient space about the same or so much as
4 may be required for the convenient use and occupation thereof.”

5 In case of improvement of leased property, the lien attaches not only to the
6 leasehold interest but also to the owner’s fee interest, unless the owner posts and
7 records a notice of nonresponsibility. The notice of nonresponsibility is a written
8 notice signed and verified by the owner or owner’s agent, notifying a potential lien
9 claimant that the owner is not responsible for the work to be performed. In that
10 event, the lien attaches only to the leasehold interest of the tenant that ordered the
11 improvement. However, if the lease itself requires the tenant to install the
12 improvement, the owner’s interest is subject to the lien.

13 The lien is for the lesser of the reasonable value of the labor, services,
14 equipment, or material furnished or for the price agreed upon, including change
15 orders and extras. Attorney’s fees cannot be included in the amount of the lien.

16 ***Lien Priority***

17 A mechanics lien has priority over a mortgage, deed of trust, or other
18 encumbrance that attaches after commencement of the work of improvement. The
19 priority of the mechanics lien relates back to the time the work of improvement
20 first commenced at the site of the improvement. All mechanics liens relate back to
21 the start of the work of improvement as a whole, regardless of when the particular
22 lien claimant began its work and regardless of when the lien is recorded. The
23 commencement of work must be “visible to the eye.”

24 As between each other, mechanics liens have the same priority. If the total
25 amount of valid liens enforced by the court’s judgment exceeds the proceeds of
26 the sale, the lien claims are satisfied pro rata.

27 **Procedures for Enforcing Lien Claim**

28 Three steps are required to perfect a claim of lien:

- 29 (1) Timely serving a preliminary 20-day notice (if required).
30 (2) Timely recording a claim of lien.
31 (3) Timely initiating a foreclosure suit.

32 ***Preliminary Notice***

33 The preliminary 20-day notice is required of all claimants except a person that
34 directly contracts with the owner of the property or a person that performs actual
35 labor for wages. The notice protects an owner or lender against a “secret lien.” An
36 owner or lender is given the identity of a potential lien claimant so that it may take
37 the necessary measures to insure that a potential lien claimant is paid.

1 The 20-day preliminary notice must describe the work or material provided and
2 give an estimate of the total cost, together with a warning in statutory language
3 that the property might be subject to a mechanics lien.

4 The preliminary notice protects the lien right beginning 20 days before the
5 notice is given. Delay in giving the notice does not bar the lien claim entirely — it
6 only bars the claim for work performed more than 20 days before the notice was
7 given.

8 The 20-day notice must be served on the owner, the construction lender (if any),
9 and the owner’s contractor. Service is made by registered mail, certified mail, or
10 personal delivery. If service is by mail, proof of service must be made by an
11 affidavit accompanied by a return receipt. A copy may be filed for record with the
12 county recorder.

13 The contractor’s license law makes it mandatory that a licensed contractor give
14 the 20-day preliminary notice.

15 ***Notice and Claim of Lien***

16 The lien is recorded in the county recorder’s office in the county in which the
17 property is located. The lien must contain a description of the work or material
18 supplied and a statement of the balance due (willful misstatement of the amount
19 provided or due invalidates the lien).

20 The earliest the lien can be recorded is after the claimant has completed its
21 work. Generally, the latest date to record the lien is 90 days after completion of the
22 work of improvement. If the owner or owner’s agent records a notice of
23 completion, the owner’s contractor has 60 days from the recording of the notice to
24 record its lien. All other lien claimants have 30 days from the recording of a notice
25 of completion.

26 ***Completion***

27 A notice of completion that is prematurely recorded is ineffective. Completion
28 generally means that all work called for in the contract is actually finished. Even
29 small items such as a second coat of paint, pulling electrical wires, installation of a
30 sewer lateral, and installation of soap dispensers have been held to prevent
31 “completion.” Warranty work, corrective work, and punchlist work do not prevent
32 completion.

33 Occupancy and use by the owner plus cessation of labor is deemed to be
34 completion. If no work has occurred for a continuous period of 60 days, the
35 project is deemed to be completed as a matter of law. Acceptance of the project by
36 the owner also constitutes completion.

37 Completion means completion of the entire work of improvement, not just one
38 trade contractor’s portion. However, if work is done under separate original
39 contracts with the owner, the owner may record a notice of completion for each
40 individual contract. The occasion for recording a separate notice of completion
41 arises, for example, when a subdivider or developer “subs everything out” to

1 subcontractors, that then are considered original contractors since each contracts
2 directly with the owner of the project.

3 ***Foreclosure Action***

4 The final step in perfecting a mechanics lien is the timely filing of a lawsuit to
5 foreclose the lien. The lawsuit must be filed within 90 days after the date the lien
6 is recorded.

7 If a lien claimant has failed to file foreclosure suit within 90 days after recording
8 a lien, the owner may petition the court for an order to release the lien.

9 It is possible for an owner to agree to an extension of time to bring the action to
10 foreclose the lien. The owner and the claimant must execute a “notice of credit”
11 and record it in the county recorder’s office.

12 The lawsuit must be filed in the county in which the property is situated. Once
13 the foreclosure suit has been filed, the lien claimant must prosecute the suit with
14 due diligence. Failure to bring a lien action to trial within two years gives the court
15 discretion to dismiss the action.

16 After filing suit, in order to protect lien priority against a bona fide purchaser of
17 the property, the lien claimant must record a lis pendens.

18 ***Arbitration***

19 Many construction contracts contain an arbitration clause, requiring the parties
20 to submit a dispute, including a payment dispute, to binding arbitration. Filing a
21 demand for arbitration is not sufficient to protect a claimant’s lien right. Suit must
22 be timely filed in the proper court.

23 A claimant desiring to protect both its right to arbitration and its lien right must
24 timely file the foreclosure suit in the proper court, along with an allegation of
25 intent to preserve arbitration rights or an application for an order staying the
26 litigation pending the outcome of the arbitration proceeding. A motion to stay
27 litigation pending arbitration must be noticed within 30 days after service of
28 summons in the foreclosure proceeding.

29 ***Stop Notice Right***

30 A claimant that has a mechanics lien right also has a stop notice right. A stop
31 notice on a private work is a notice to the owner or construction lender to withhold
32 construction funds to satisfy the claim. Rather than attaching to real property, the
33 stop notice attaches to the construction loan fund, or to money in the hands of the
34 owner to be paid to the owner’s contractor. The stop notice has the effect of
35 intercepting funds. The ultimate result of the enforcement of a stop notice is entry
36 of a judgment against the fund holder.

37 A stop notice must include a description of the work performed, the value of the
38 work already done and the value of the entire work agreed to be done, and the
39 balance due.

1 If the stop notice is forwarded to a construction lender, it may also include (1) a
2 request for notice in the event that the construction lender elects not to withhold
3 funds on the ground that a payment bond has been previously recorded and (2) a
4 self-addressed envelope for the lender to use in furnishing the claimant with a
5 copy of the recorded payment bond.

6 As with a mechanics lien, serving a preliminary 20-day notice is a prerequisite
7 to asserting a stop notice. A stop notice must be given before the expiration of the
8 time within which to record a mechanics lien.

9 The stop notice to the owner does not have to be bonded. However, in order to
10 compel a construction lender to withhold funds, the stop notice must be
11 accompanied by a stop notice bond.

12 A stop notice must be served personally or by registered or certified mail. A
13 lawsuit to enforce the stop notice must be filed in the proper court within 90 days
14 after the expiration of the period for recording a mechanics lien. Typically, the
15 action to enforce the stop notice is part of the same complaint as the action to
16 foreclose the lien.

17 If more than one stop notice attaches to a loan fund and the amount of the fund
18 is insufficient to satisfy all notices, the funds are disbursed pro rata. Distribution is
19 made without regard to the relative timing of the stop notices. There is no priority
20 among valid stop notice claims.

21 A stop notice, like a mechanics lien, can be released by using the statutory form
22 of release or by posting a stop notice release bond.

23 **Protection of Owner and Construction Lender**

24 The law gives the owner and lender several ways to protect against a mechanics
25 lien or stop notice.

26 ***Lien Release***

27 The owner and lender may insist on receiving a statutory release form before
28 making payment. In order to be effective, the release must be in the form
29 prescribed by the statute.

30 ***Retention***

31 An owner usually withholds payment of a 10% retention until 35 days after
32 recording the notice of completion. Because a lien of a subcontractor or supplier
33 must be recorded within 30 days after notice of completion, this requirement
34 allows the owner to check with the title company to make sure no lien claim has
35 been recorded before issuing final retention to the owner's contractor.

36 ***Notice of Completion***

37 Recordation of a valid notice of completion shortens the time to record a lien
38 from 90 days after the completion of the project to 30 days after recording notice

1 of completion (or, in the case of a contractor dealing directly with the owner, 60
2 days after notice of completion).

3 ***Payment Bond***

4 An owner or developer can limit exposure to a lien claim by recording the
5 original contract and a payment bond before the work commences. The payment
6 bond obligates the surety to make payment for labor and material supplied in the
7 construction of the work of improvement, and a lien claim may not be recorded for
8 labor or material not included in the recorded contract. The payment bond inures
9 to the benefit of all potential mechanics lien claimants.

10 A payment bond is rarely used, primarily because most contractors lack bonding
11 capacity. A payment bond offers extra protection to a claimant by providing a
12 source of recovery in addition to a lien claim or stop notice. It also protects the
13 owner, who can insist that the surety pay off a lien claim and thus protect the
14 owner's title.

15 The surety is not obligated to pay a bond claimant unless the claimant either
16 records a lien claim or gives the surety written notice of its claim on the bond
17 within the time for recording a lien. Recording the bond may shorten the statute of
18 limitations from four years to six months.

19 ***Lien Release Bond***

20 An owner or contractor may remove a lien claim from the title by recording a
21 lien release bond. The bond must be executed by a corporate surety in 1-1/2 times
22 the amount of the claim of lien. The bond obligates the surety to pay any sum the
23 lien claimant may recover on the claim, together with costs of suit.

24 On recording a release bond, the owner's property is released from the lien and
25 from any action brought to foreclose the lien. The bond becomes substitute
26 security — the lien claimant is protected by the financial solvency of the surety,
27 and the owner is free to sell or finance its property pending the outcome of the lien
28 foreclosure action. The lien claimant has six months from notice of the bond to file
29 its action against the surety.

30 ***Attacking Lien by Motion***

31 An owner may attack an invalid lien by filing a motion to remove the lien.

32 **REFORM OF CALIFORNIA LAW**

33 **CONTEXT OF MECHANICS LIEN LAW**

34 The mechanics lien law implements the policy to protect an artisan against
35 unjust enrichment of a property owner that fails to pay. The law also fosters other
36 public policies. It promotes development of property by protecting the
37 construction industry. It recognizes the reality of an industry characterized by

1 independent contractors that contribute to a work of improvement without a direct
2 contractual relationship with the owner of the improvement.

3 The mechanics lien and stop notice rights are not the only remedies available to
4 the construction industry. Other remedies include liability under a theory of
5 contract, prompt payment statute, quasi-contract, common law tort, attachment,
6 constructive trust, and imputed liability.¹⁷

7 But the mechanics lien and stop notice are undoubtedly the most effectual of the
8 remedies. They are quick, and the claimant need take no further action because as
9 a practical matter the owner will settle rather than have the property encumbered
10 by a lien or have construction come to a halt due to interruption of the flow of
11 funds.

12 The importance of the construction industry, the informality of credit extension
13 in the industry, and the frequency of conflict and litigation, among other factors,
14 all find expression in the mechanics lien law. For these reasons, despite
15 availability of other remedies, the legislative focus on the mechanics lien and stop
16 notice remedies continues unabated.

17 **General Approach**

18 The Law Revision Commission has undertaken this review and revision of the
19 mechanics lien law and related provisions in order to modernize, simplify, and
20 clarify the law, making it more user friendly, efficient, and effective for all
21 stakeholders.¹⁸

22 Stakeholders predictably have different views on the soundness of the existing
23 statute and the scope and desirability of statutory reform. Some have urged the
24 Commission to “go back to square one” and conduct a thorough review and
25 revision of the mechanics lien law and related provisions, on the ground that they
26 are confusing, complicated, and at odds with modern conditions. Others have
27 argued that, while some improvements could be made, the statute is basically
28 sound and represents accumulated improvements from many years’ work.

29 The history of the mechanics lien law is one of continuous revision. Even
30 though the statute is recompiled periodically and given a fresh start, it is invariably
31 subject to ongoing manipulation. The basic decision is whether to attempt a
32 moderate revision that preserves the existing structure of the law while improving
33 it, or a radical revision that simplifies and streamlines the law.

34 **Moderate Revision of Existing Statute**

35 The moderate approach starts with the existing statute and seeks to improve the
36 law by simplifying and streamlining within the existing statutory framework. This
37 approach offers a number of advantages. It makes revisions within a known

17. See generally California Mechanics’ Liens and Related Statutory Remedies §§ 1.19-1.29 (Cal. Cont. Ed. Bar, 3d ed. 2003).

18. See also *Mechanic’s Lien Law Reform*, 31 Cal. L. Revision Comm’n Reports 343 (2001).

1 structure, enabling a stakeholder to understand and evaluate the effect of proposed
2 changes in the law. It preserves to a maximum extent the knowledge, experience,
3 and body of interpretation accumulated over years of operation under the existing
4 scheme. It reflects the Commission’s experience that often reform of the law in a
5 highly contentious area must proceed on an evolutionary rather than revolutionary
6 basis.

7 **Radical Revision of Existing Statute**

8 A more radical simplification of the mechanics lien law is conceivable.

9 The California statutes have evolved for more than 150 years and are lengthy,
10 ambiguous, technical, and hard to understand. One Commission consultant has
11 advocated radical simplification, maintaining the need for reform is self-evident,
12 and making the following indictment of the existing statute:¹⁹

- 13 • The right of a supplier of materials to enforce a mechanics lien claim
14 depends on a meaningless distinction — whether the materials were ordered
15 by a contractor or another supplier.
- 16 • A design professionals lien is provided for under a separate and confusing
17 set of rules.
- 18 • The time periods for recording and enforcing claims are unduly complex
19 and confusing and the time period dealing with enforcement of a stop notice
20 is different from that governing the enforcement of a mechanics lien.
- 21 • A stop notice claim includes attorney’s fees but a mechanics lien claim does
22 not.
- 23 • It takes a court action to clear a mechanics lien claim from title if an
24 enforcement action has not timely been filed.
- 25 • The preliminary notice requirement is lengthy, complex, and unduly
26 technical.
- 27 • The definition of “completion” for a work subject to acceptance by a public
28 agency is different from the definition of “completion” for all other works.
- 29 • A developer under certain circumstances has the right to record an early
30 notice of completion and thus take potential claimants by surprise.
- 31 • An extraordinarily complex and ambiguous statute imposes on certain
32 project owners the obligation to furnish a payment bond.
- 33 • Venue requirements are unduly technical.
- 34 • The provisions allowing arbitration of mechanics lien claims are complex
35 and can lead to injustice.
- 36 • A superfluous and unused provision allows a preliminary 20-day notice to
37 be recorded.

19. See comments of James Acret in Commission Staff Memorandum 2004-4 (available from the Commission, www.clrc.ca.gov). Mr. Acret states, “The present statute is an unruly beast that cannot easily be beaten into submission. This writer believes that the mechanics lien statute should be rewritten from scratch rather than redlined. That approach got us to where we are now!”

- 1 • A complex set of time limits and procedures governs recording of a notice
2 of nonresponsibility.
- 3 • The statutory release forms imposed by the legislature are complex and
4 misleading.
- 5 • An unnecessary separate preliminary notice requirement applies to a
6 payment bond claim.
- 7 • More than a dozen separate statutes establish prompt payment requirements
8 for different classes of debtors and creditors and their inconsistent and
9 conflicting provisions should be simplified and provided for in a single
10 paragraph.

11 Various stakeholders have suggested that some of the existing complexity in the
12 law is the result of legislative policy decisions to protect differing interests, and
13 that simplification could cause the loss of those protections. On a more technical
14 level, radical simplification would cause loss of existing interpretive language,
15 resulting in litigation to resolve ambiguities that are well settled in existing law.

16 **Uniform Construction Lien Act (1987)**

17 The Commission has also considered replacement of the California statute with
18 a model act. The logical choice for that approach would be the Uniform
19 Construction Lien Act (1987).

20 The Uniform Act tries to follow main line mechanics lien principles derived
21 from existing state laws. It has been adopted in one state (Nebraska). The
22 experience in Nebraska appears to be satisfactory. There have been very few
23 amendments to it in the 20-plus years since its enactment.

24 The argument for uniformity in this area of the law is, “In an era of national
25 lenders and suppliers and of many multistate builders, the variation among the
26 states as to mechanics’ lien matters is a substantial impediment to an efficient
27 mortgage and real estate market.”²⁰ Because adoption of the Uniform Act is not
28 widespread, it must be viewed as a model rather than as a realistic opportunity to
29 achieve uniformity.

30 **Commission Recommendation**

31 The Commission sees no real benefit from adoption of a model act such as the
32 Uniform Construction Lien Act (1987). While the Uniform Act is a clean draft and
33 represents main line mechanics lien law, it introduces terminology and concepts
34 foreign to California, and omits provisions that in California have been thought to
35 be important. There is no real impetus to uniformity among the states by adoption
36 of the act. A superior approach is to work with the existing California statute.

37 A practical consideration is the politics of this area of law. Given the many
38 competing interests that aggressively seek to protect their rights in the legislative
39 process, proposed legislation that does not continue existing stakeholder

20. *Prefatory Note*, Uniform Construction Lien Act (1987).

1 protections is unlikely to fare well. Radical simplification cannot be achieved
2 unless stakeholders believe that on balance their interests are adequately protected.
3 The Commission's experience to date is that stakeholders in the construction
4 industry are unwilling to engage in a balancing process if that may result in
5 erosion of any existing protections.²¹

6 The Commission recommends the more moderate approach to simplification of
7 the existing statute. That does not preclude substantive change where there is a
8 consensus that the improvement is desirable, or where there is a balance that the
9 stakeholders believe does not disturb the current equilibrium of rights and
10 remedies. But the primary objective of the Commission's recommendation is to
11 make the existing mechanics lien law simpler, clearer, and more usable.

12 By modernizing the drafting, eliminating archaic and unnecessary language,
13 reorganizing and simplifying the structure of the statute, and using shorter, clearer
14 sections, the statutes can be greatly improved even if no major substantive
15 changes are made. In addition, a simpler and better-organized statute facilitates
16 implementation of policy revisions and technical adjustments in future years as
17 the need arises.²²

18 This recommendation does propose a number of significant substantive and
19 procedural improvements, in addition to statutory simplification. The Commission
20 believes that the proposed improvements represent a fair balance that does not
21 disadvantage any stakeholder and that benefits all stakeholders.

22 DRAFTING CONSIDERATIONS

23 **Drafting Approach**

24 The proposed law includes a complete overhaul and technical cleanup of
25 existing law, in addition to the substantive and procedural improvements described
26 in this recommendation. The proposed law breaks long sections into shorter ones,
27 inserts appropriate paragraphing, relocates out of place provisions, modernizes
28 drafting style, substitutes gender-neutral language, seeks to achieve consistency in
29 usage throughout the statute, and in general attempts to make the statute better and
30 more usable from a technical perspective.

31 Because the technical revisions are so minor and so numerous, they are not
32 generally noted in this part of the recommendation. However, each section of the
33 proposed law includes a Comment that identifies its source in existing law, and
34 details the more significant technical revisions. In addition, this recommendation

21. The Commission's rather modest proposal to protect a homeowner from double liability in a small home improvement contract (under \$15,000) where the homeowner has paid the general contractor in good faith proved to be unenactable. See *The Double Payment Problem in Home Improvement Contracts*, 31 Cal. L. Revision Comm'n Reports 281 (2001) (not enacted).

22. *Mechanic's Lien Law Reform*, 31 Cal. L. Revision Comm'n Reports 343, 352-54 (2001) (footnotes omitted).

1 includes a disposition table that points to the specific location in the proposed law
2 of each provision of existing law.

3 **Location, Numbering, and Organization of Statute**

4 The mechanics lien law has been housed in various places in the California
5 codes during its long career. Most recently it resided in the Code of Civil
6 Procedure, before being moved to its current Civil Code location in 1969.²³

7 The proposed law relocates the statute to the end of the Civil Code, at Section
8 7000 *et seq.*²⁴ The relocation accomplishes several purposes. It will avoid the
9 confusing situation of using old section numbers for new and different provisions
10 under the reorganized statute. It will position the statute in an easy-to-find spot at
11 the end of the code. And the new location will allow room for future expansion of
12 the law without having to resort to hybrid decimal numbering. If the history of the
13 mechanics lien law teaches us anything, it is that the statute will undergo
14 continuing revision.

15 One concern is that relocating the statute will necessitate conforming revisions
16 to nearly 100 other code sections that cross-refer to the mechanics lien law.
17 However, the vast majority of the cross-references are to the public work portions
18 of the mechanics lien law.²⁵ These will require revision in any event, to reflect
19 relocation of the public work provisions of the mechanics lien law to the Public
20 Contract Code.²⁶

21 **Public Works Contract**

22 Public works contract remedies are physically located in the mechanics lien law.
23 This placement is confusing because the lien remedy is not available for a public
24 works contract dispute.²⁷

25 The principal remedies for a public works contract dispute are the stop payment
26 notice and the payment bond. The mechanics lien law deals with stop payment
27 notices and payment bonds for both private work and public work. But there is no
28 commonality among the private work and public work statutes; each statute is *sui*
29 *generis*.²⁸

30 At the time the public work remedies were originally incorporated into the
31 mechanics lien law, the Public Contract Code did not exist. That code was created

23. Civ. Code §§ 3082-3267, enacted by 1969 Cal. Stats. ch. 1362.

24. See proposed Civ. Code §§ 7000-7848 *infra*.

25. See “Conforming Revisions” below.

26. See “Public Works Contract” below.

27. Civ. Code § 3109.

28. Compare Civ. Code § 3097 (preliminary 20-day notice (private work) with Civ. Code § 3098 (preliminary 20-day notice (public work)); Civ. Code §§ 3156-3176.5 (stop notice for private work) with Civ. Code §§ 3179-3214 (stop notice for public work); Civ. Code §§ 3235-3242 (payment bond for private work) with Civ. Code §§ 3247-3252 (payment bond for public work).

1 in 1981.²⁹ It seeks to consolidate statutory material relating to public contracts
2 because “placing all public contract law in one code will make that law clearer and
3 easier to find.”³⁰

4 The Public Contract Code contains substantial amounts of statutory material
5 governing public works contracts, including payment bond requirements and
6 prompt payment requirements. But it does not contain the core stop notice
7 remedies or the payment bond procedural provisions, which remain embedded in
8 the mechanics lien law.

9 The proposed law relocates all of the public works contract material from the
10 mechanics lien law to the Public Contract Code. This has the incidental effect of
11 greatly simplifying the mechanics lien law itself.

12 Many persons in the construction industry are involved with both private works
13 and public works, and it is perhaps a convenience for them to have all the
14 construction remedies located in one place, rather than split between two codes.
15 However, those persons must look to the Public Contract Code in any event.
16 Essentially all of the prompt payment requirements for a public works contract are
17 in the Public Contract Code, as is the main payment bond requirement applicable
18 to all state agency construction contracts exceeding \$5,000.³¹ Moreover, all of the
19 provisions governing public works contract terms, bidding processes, awards,
20 conduct of performance, and the like, are consolidated in the Public Contract
21 Code.

22 Removal of the public work remedies to the Public Contract Code necessitates
23 duplication of a number of general provisions found in the mechanics lien law. For
24 example, some definitions and general provisions on notice and proof of service,
25 construction of bonds, completion, and the like, are applicable to a public works
26 contract. The proposed law continues these provisions, tailoring them to the
27 circumstances of a public works contract.

28 **Design Professionals Lien**

29 An architect, engineer, or land surveyor that provides design services to the
30 owner and is not paid is entitled to a lien under the mechanics lien law.³² The
31 mechanics lien right of a design professional is supplemented by a separate
32 statutory lien — the design professionals lien.³³

29. 1981 Cal. Stat. ch. 306.

30. Pub. Cont. Code § 100.

31. Pub. Cont. Code § 7103.

32. Civ. Code § 3110.

33. Civ. Code §§ 3081.1-3081.10.

1 The design professionals lien was enacted in 1990. It is intended to cover the
2 situation where services are provided by a design professional but construction on
3 the work of improvement is not commenced.³⁴

4 The design professionals lien parallels the mechanics lien, incorporates by
5 reference the mechanics lien enforcement procedure, and is terminated by
6 commencement of construction. (In that circumstance the design professional may
7 use the mechanics lien remedy). The proposed law states clearly that the design
8 professionals lien ends when construction begins, and at that point the design
9 professional's remedy is a mechanics lien.

10 The proposed law relocates the design professionals lien among the other private
11 work remedies. This will have the effect of applying standard terminology,
12 processes, and forms to it. In addition, useful provisions of the mechanics lien law
13 will become applicable to it. For example, the lien release procedures, whether by
14 release bond or release order, would apply to the design professionals lien, along
15 with remedies for a fraudulent claim of lien, and similar general provisions.

16 **Terminology**

17 Many of the definitional provisions in the mechanics lien statute are confusing
18 and disorganized. For example, Civil Code Section 3097 — purporting to define
19 “preliminary 20-day notice (private work)” — is the longest section in the
20 mechanics lien statute. It is twice as long as the entire mechanics lien statute in the
21 1872 Code of Civil Procedure. The statute, amended over 15 times since 1969, is
22 almost a mini-practice guide in itself, containing substantive and procedural
23 material that should be relocated with related substantive provisions. Many other
24 supposed definitions are really substantive rules that should be integrated with
25 related provisions.³⁵

26 Some terms are defined and never used, such as “materialman”³⁶ and
27 “subdivision”.³⁷ Others are defined, but largely unused in later provisions, such as
28 “site”,³⁸ which is ignored in favor of references to land, real property, or jobsite.
29 Some are defined and used only once, such as “notice of nonresponsibility”.³⁹
30 Archaic language, such as the references to flumes and aqueducts in the definition
31 of “work of improvement”⁴⁰ should be eliminated or subsumed in general
32 language.

34. A mechanics lien is unavailable to a design professional unless construction is commenced. *D’Orsay Int’l Partners v. Superior Court*, 123 Cal. App. 4th 836, 20 Cal. Rptr. 3d 399 (2004).

35. See, e.g., Civ. Code §§ 3083 (bonded stop notice), 3084 (claim of lien), 3092 (notice of cessation), 3093 (notice of completion).

36. Civ. Code § 3090.

37. Civ. Code § 3105.

38. Civ. Code § 3101.

39. Civ. Code § 3094.

40. Civ. Code § 3106.

1 The proposed law cleans up and systematizes the statutory definitions for
2 consistent usage throughout the mechanics lien law and related remedies. Two
3 terminological issues are noteworthy.

4 ***“Mechanics Lien”***

5 The proposed law retains the term “mechanics lien”, even though it is a 19th
6 century relic. Despite the archaism, there is a common understanding of its
7 meaning in the construction industry, and it is useful shorthand.

8 The existing statute, however, rarely uses the term. The law provides a number
9 of liens besides the “mechanics” lien, including the site improvement lien and the
10 design professionals lien. The proposed law follows the current practice of
11 referring to a particular lien, where appropriate, without attaching a label to it.

12 ***“Original Contractor”***

13 Existing law distinguishes between an “original contractor” — one who
14 contracts directly with the owner — and other contractors such as a subcontractor,
15 who does not contract directly with the owner. The distinction is important, since
16 questions of privity, notice, and the like, depend on it.

17 The term “original contractor” is confined to the mechanics lien law; it does not
18 appear to be in common use outside of the statute.⁴¹ Terms more commonly in use
19 in the construction industry include “prime contractor” and “general contractor”.
20 None of these terms is completely satisfactory, particularly in the owner-builder
21 context.

22 The proposed law substitutes the term “direct contractor” for “original
23 contractor”. It is more descriptive than the other commonly used terms, and
24 invokes the operative fact that a direct contractor is in privity with the owner by
25 virtue of a direct contractual relationship.

26 **Operative Date and Transitional Provisions**

27 The proposed revision of the mechanics lien law is complex, with many changes
28 in language (including forms) and in procedure. The proposed law includes a one
29 year deferral of its operative date for transitional purposes. That will allow ample
30 time for education about the new law, forms revision, and any necessary corrective
31 legislation.

32 The proposed law would apply to existing as well as new contracts. However,
33 any notice given or action taken before the operative date of the new law would be
34 governed by the applicable law in effect at that time and not by the new law.

41. The term is also used in the Oil and Gas Lien Act and in the Public Contract Code, where it apparently has the same meaning.

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GENERAL PROVISIONS

In the interest of simplification and clarity, the proposed law standardizes treatment of various issues common to the lien, stop notice, and payment bond remedies for a work of improvement. These include issues relating to notice, completion, waiver and release, and miscellaneous other matters.

NOTIFICATION

The mechanics lien law is replete with notices. There is preliminary notice, stop notice, notice of overdue laborer compensation, notice of nonresponsibility, notice to principal and surety, stop work notice, notice of completion, notice of cessation, and so forth. Each notice is subject to unique provisions governing its contents, manner of service, proof of service, and the like. The proposed law seeks to standardize these provisions in order to eliminate complexity and provide consistency throughout the range of remedies.

Terminology

The existing law employs a variety of terms for communicating information. A party may be required to “notify” or “give notice to” another party, “serve notice” or make a “demand” on a party, or “advise” a party. The proposed law standardizes usage, speaking in terms of giving notice and making proof of notice.

Many of the notice provisions require information to the extent “known” to the person giving the notice. The proposed law codifies an objective standard of knowledge — such a requirement applies to information the person knows or should have known.

Contents of Notice

The various notices under the mechanics lien law typically require similar information, such as the name and address of the owner, original contractor, and construction lender, and a description of the site sufficient for identification. Each of these notices varies slightly; often there is no apparent reason for the variation.

For example, many notices require a description of the site and the street address, but excuse an erroneous address if there is an accurate legal description. Some simply require a description without elaboration. Others require a legal description.

Although the purpose of each notice is unique, the basic identifying information is not. The proposed law prescribes standard contents applicable to all notices, including:

- The name and address of the owner or reputed owner.
- The name and address of the direct contractor.
- The name and address of the construction lender, if any.

- 1 • A description of the site sufficient for identification, including the street
2 address of the site, if any. If a sufficient legal description of the site is given,
3 the effectiveness of the notice is not affected by the fact that the street
4 address is erroneous or is omitted.
- 5 • The name, address, and relationship to the parties of the person giving the
6 notice.
- 7 • If the person giving the notice is a claimant:
 - 8 (1) A general statement of the kind of labor, services, equipment, or
9 material provided.
 - 10 (2) The name of the person to or for which the labor, services,
11 equipment, or material is provided.
 - 12 (3) A statement of the claimant's demand, after deducting all just
13 credits and offsets.

14 **Manner of Notice**

15 Many notices under the mechanics lien law must be given by personal delivery,
16 by leaving the notice at a specified place or with a specified person, or by deposit
17 in the mail. Some notices are posted on the jobsite. Recordation may also be
18 required.

19 Mailed notice ordinarily must be given by registered or certified mail. A few
20 notices may be given by first class mail evidenced by a certificate of mailing.

21 Some notice requirements do not specify a manner — the information is simply
22 communicated by notifying a person, making a demand, advising a person,
23 providing a copy, making information available, and so on. The statute does not
24 indicate how this is to be done.

25 The proposed law establishes a general notice procedure, to be applied
26 throughout the mechanics lien law. The general procedure would replace the
27 individual variants applicable to one type of notice or another. Any notice could be
28 given by personal delivery, mail, or by leaving the notice for the person and
29 mailing a copy in the manner provided for service of summons in a civil action.⁴²

30 **Mailed Notice**

31 Where notice is given by mail, it must be by first class registered or certified
32 mail. The proposed law also authorizes Express Mail, or another method of
33 delivery providing for overnight delivery. Overnight delivery by a private express
34 service carrier is an innovation. **The Law Revision Commission particularly**
35 **solicits public comment on this provision.**

42. Code Civ. Proc. § 415.20.

1 **Posted Notice**

2 A few notices under the mechanics lien law must be posted.⁴³ The posting
3 requirement is generally augmented by a supplemental means of notice, such as
4 recording or giving a copy to subcontractors.

5 The proposed law standardizes the posting provisions, requiring display in a
6 conspicuous location at the site and at the main office of the site, if one exists.

7 **Recorded Notice**

8 Recording is used to give constructive notice under the mechanics lien law. The
9 proposed law generalizes and standardizes recording provisions.

10 A unique feature of the mechanics lien law is that, while generally an instrument
11 is not recordable unless acknowledged,⁴⁴ both a claim of lien and a notice of
12 completion must be accepted by the recorder and are deemed duly recorded
13 without acknowledgment.⁴⁵ These provisions reflect a legislative judgment that
14 verification provides sufficient proof of authenticity and that a faster and more
15 efficient recording procedure is desirable for mechanics liens.⁴⁶ The proposed law
16 generalizes these provisions for application throughout the mechanics lien law.

17 **Electronic Notice**

18 All significant notices and acts under the mechanics lien law are required to be
19 in writing, including the preliminary notice, notice of nonresponsibility, notice of
20 completion, notice of cessation, claim of lien, and various waivers and releases.
21 Electronic delivery is not contemplated.

22 The Law Revision Commission believes the law should move towards electronic
23 notification. Electronic notification would engender a number of benefits,
24 including (1) reduced flow of paperwork, (2) reduced time for notice, (3) reduced
25 cost of delivery, and (4) enhanced opportunity for monitoring notices, deadlines,
26 and the like, through electronic databases.

27 Much of the construction industry remains paper based, however, and the law
28 should move slowly in this area. The proposed law makes clear that electronic
29 notification is permissible only where the party to be notified has agreed to receive
30 the notice by electronic means.

31 This approach is consistent with the California Uniform Electronic Transactions
32 Act.⁴⁷ It is possible, but it has not yet been determined, that the agreement

43. These are the notice of nonresponsibility, and its cancellation, as well as the stop work notice.

44. See Gov't Code § 27287.

45. Civ. Code §§ 3084, 3093.

46. 69 Ops. Cal. Atty. Gen. 97 (1986).

47. Under that act, a specific method of communication prescribed by statute (such as the mechanics lien law) may not be waived by the parties, unless allowed by the statute. Civ. Code § 1633.8. The existence of an agreement is determined from the context and surrounding circumstances, including the parties'

1 provisions of California law are preempted by the federal Electronic Signatures in
2 Global and National Commerce Act, which contains more extensive requirements
3 for consent in the case of a consumer.⁴⁸ To ensure that the California law is
4 compliant in the event of federal preemption, the proposed law requires that in the
5 case of a consumer construction contract, federal standards must be satisfied.

6 **Proof of Notice**

7 Like the manner of notice, proof of notice is treated inconsistently under the
8 mechanics lien statutes. The proposed law standardizes proof of mailing and proof
9 of delivery provisions.

10 ***Proof of Mailing***

11 A number of provisions of the mechanics lien law contemplate notice by
12 registered or certified mail. Typically these statutes provide for proof of notice by
13 a return receipt or a photocopy of the record of delivery and receipt maintained by
14 the post office, showing the date of delivery and to whom delivered. In the event
15 of nondelivery, the returned envelope itself is proof of mailing.

16 Because the post office might not return either the proof of mailing or the
17 envelope, the proposed law expands proof of proper mailing to include a
18 certificate of mailing issued by the post office, as well as more modern techniques
19 of proof such as electronic signature capture. Under the proposed law, proof of
20 mailing may be made by:

- 21 (1) A return receipt, delivery confirmation, signature confirmation, or other
22 proof of delivery or attempted delivery provided by the United States Postal
23 Service.
- 24 (2) A proof of mailing certified by the United States Postal Service.
- 25 (3) A tracking record certified by an express service carrier showing delivery or
26 attempted delivery.

27 It should be noted that the United States Postal Service's certificate of mailing
28 shows only that something was mailed, not that it was delivered. However, the
29 United States mail is reasonably reliable, and proof of mailing may be sufficient.

30 **The Law Revision Commission seeks comment of people in the industry**
31 **about their experience with the reliability of mail delivery by the United**
32 **States Postal Service.**

conduct; an agreement to conduct a transaction by electronic means may not be contained in a standard form contract that is not an electronic record. Civ. Code § 1633.5(b).

48. A consumer must affirmatively consent to receiving electronic communications and must confirm the consent electronically or by a reasonable demonstration that the electronic communication being consented to is capable of being received. 15 U.S.C. § 7001(c). A consumer transaction, for E-Sign purposes, is one involving an individual who obtains "products or services which are used primarily for personal, family, or household purposes." 15 U.S.C. § 7006(1). This would appear to extend to a construction contract for building, remodeling, or otherwise making an improvement to a home.

1 **Proof of Personal Delivery**

2 The proposed law includes general provisions on proof of notice by personal
3 delivery. The provisions are generalized from the proof of delivery models in the
4 statutes governing preliminary notice and the stop work notice.⁴⁹

5 Under the proposed law, proof of notice by personal delivery is made by a proof
6 of notice affidavit, which shows (1) the time, place, and manner of notice, (2) the
7 name and address of the person to which notice was given (and the title or
8 capacity in which the person was given notice).

9 **Address at Which Notice is Given**

10 Under existing law, the address at which notice is to be given varies with the
11 type of notice. The proposed law standardizes the address at which notice is to be
12 given.

13 Under the proposed law, all notice is given at the address of the recipient's
14 residence or place of business, or at any of the following addresses:

- 15 • If the person to be notified is an owner, at the address shown on the contract,
16 the building permit, or a construction trust deed.
- 17 • If the person to be notified is a construction lender, at the address shown on
18 the construction loan agreement or construction trust deed.
- 19 • If the person to be notified is a direct contractor, at the address shown on the
20 contract or building permit, or on the records of the Contractors' State
21 License Board.
- 22 • If the person to be notified is a claimant, at the address shown on the
23 contract, preliminary notice, claim of lien, stop payment notice, or claim
24 against a payment bond, or on the records of the Contractors' State License
25 Board.
- 26 • If the person to be notified is the principal or surety on a bond, at the address
27 provided in the bond for service of notices, papers, and other documents.

28 **When Notice is Complete**

29 Under existing law a variety of rules determine when notice is complete. The
30 proposed law standardizes these provisions by eliminating the variants and
31 providing that notice is complete at the following times:

- 32 • If given by personal delivery, when delivered.
- 33 • If given by mail, when deposited in the mail or with an express service
34 carrier in the manner provided in Section 1013 of the Code of Civil
35 Procedure.
- 36 • If given by leaving the notice and mailing a copy in the manner provided in
37 Section 415.20 of the Code of Civil Procedure for service of summons in a
38 civil action, five days after leaving the notice.

49. See Civ. Code §§ 3097, 3199, 3260.2.

- 1 • If given by posting, when posted.
- 2 • If given by recording, when filed for record in the office of the county
- 3 recorder.

4 COMMENCEMENT AND COMPLETION

5 Commencement and completion of a work of improvement are fundamental to
6 the operation of the mechanics lien system. Various legal incidents of the
7 mechanics lien law hinge on the time a work of improvement commences. For
8 example, priorities may depend on whether a construction loan was recorded
9 before or after commencement. The cases have developed a definition of
10 commencement;⁵⁰ the proposed law codifies the cases in order to make the concept
11 clear and accessible.

12 Completion of a work of improvement triggers time limits for recording a claim
13 of lien, enforcing the liability on a payment bond, and paying the direct contractor
14 a retention withheld by the owner, among other consequences.⁵¹ Completion may
15 be deemed to have occurred in a number of circumstances, in addition to actual
16 completion, for purposes of triggering time limits. For example, completion occurs
17 on cessation of labor for a continuous period of 60 days, on acceptance by the
18 owner, on acceptance by a public entity, or on occupation or use by the owner
19 accompanied by cessation of labor.⁵²

20 **Acceptance by Owner**

21 Under existing law, completion occurs on acceptance of a work of improvement
22 by the owner. The proposed law eliminates this provision. It is not used in
23 practice. The owner's recordation of a notice of completion is a preferable
24 demarcation of completion, since it is a fixed date and is communicated to
25 interested persons.

26 **Acceptance by Public Entity**

27 Under existing law, if a work of improvement "is subject to acceptance by any
28 public entity," completion is deemed to be the date of acceptance by the public
29 entity.⁵³ The provision has been construed to apply to private work that includes
30 elements of public dedication.⁵⁴

50. See, e.g., *Walker v. Lytton Sav. & Loan Ass'n*, 2 Cal. 3d 152, 159, 84 Cal. Rptr. 521 (1970); *Halbert's Lumber, Inc. v. Lucky Stores, Inc.* 6 Cal. App. 4th 1233, 1240-1241, 8 Cal. Rptr. 2d 298 (1992) (commencement occurs when material or supplies are delivered to site or there is actual visible work of a permanent nature on site).

51. See, e.g., Civ. Code §§ 3115, 3116 (time for recording claim of lien).

52. See Civ. Code § 3086.

53. Civ. Code § 3086.

54. See, e.g., *A.J. Raisch Paving Co. v. Mountain View Sav. & Loan Ass'n*, 28 Cal. App. 3d 832, 105 Cal. Rptr. 96 (1972) (private developer's contract for installation of streets, sewers, landscaping, etc., in

1 Practitioners have suggested that this provision should be eliminated. The
2 apparent purpose of the provision is to hold the lien claim period open so that, in a
3 dedication situation, the owner can require the contractor to make changes
4 demanded by the public entity as a condition to acceptance. **The Law Revision
5 Commission requests public comment on whether this provision in fact serves
6 a useful purpose.**

7 **Notice of Completion**

8 The owner may shorten applicable time limits by recording a notice of
9 completion. The owner may also record a notice of cessation of labor, which is
10 deemed completion.⁵⁵ Recordation of the notice triggers the statutory period for a
11 claimant to record a claim of lien.⁵⁶

12 *Consolidation of Notice of Completion and Notice of Cessation*

13 The notice of completion and notice of cessation are treated in tandem in
14 existing law. The overlap between the two notices is substantial. In the interest of
15 simplification, the proposed law merges the two notices into one notice of
16 completion.

17 *Time for Recording Notice of Completion*

18 A notice must be recorded within 10 days after the date of actual completion or
19 it is ineffective.⁵⁷ This period may be unduly short to enable an owner to
20 determine that the contract has been fully performed. The proposed law allows the
21 notice to be recorded up to 15 days after actual completion; that allows the owner
22 additional time without disrupting basic time limits associated with completion
23 and the notice of completion.

24 *Notice of Recordation*

25 If the owner records a notice of completion, the owner must notify a potential
26 lien claimant of the recordation. Failure to notify a claimant of the recording of a
27 notice of completion extends the time for recording a claim of lien.

28 A lien claimant may find it difficult to identify the claim to which the notice
29 relates, due to fragmentary information in the notification. The proposed law
30 addresses this problem by replacing the notification requirement with a
31 requirement that the owner provide a potential lien claimant a copy of the notice of
32 completion.

subdivision subject to acceptance by city); *Howard A. Deason & Co. v. Costa Tierra Ltd.*, 2 Cal. App. 3d 742, 83 Cal. Rptr. 105 (1969) (street work contracted for by owner-builder of apartment complex subject to acceptance by city).

55. Civ. Code §§ 3086, 3092.

56. See Civ. Code §§ 3115, 3116.

57. Civ. Code § 3093.

1 *Notice by County Recorder*

2 Existing law requires the county recorder to give notice to a potential lien
3 claimant when a notice of completion is filed. There is no consequence for the
4 recorder's failure to do this, and most recorders do not give the notice.

5 Due to the marginal benefit of the county recorder notice scheme, and in the
6 interest of greater simplicity of the mechanics lien law, the proposed law
7 eliminates the requirement. The owner's notification of potential lien claimants is
8 a preferable remedy.

9 *Separate Contracts on Single Job*

10 Under existing law, where there are contracts for different parts of the same job,
11 a notice of completion may be recorded separately as to each contract.⁵⁸ That
12 technique may be advantageous for an owner-builder, for example, to narrow
13 liability exposure. It can also benefit a subcontractor whose right to receive a
14 retention may be triggered by the notice of completion.

15 On the other hand, a partial notice of completion may cause problems by
16 triggering a lien claim or foreclosure as to a portion of the project. If that portion is
17 stand-alone, the foreclosure may be feasible; if it is part of an integrated whole,
18 foreclosure may be difficult.

19 **The Commission solicits public comment on the policy of this provision, and**
20 **whether it should be preserved in the law.**

21 WAIVER AND RELEASE

22 Existing law prescribes forms that must be used in order for a lien claimant to
23 execute a valid waiver and release — conditional release for a progress payment,
24 unconditional release for a progress payment, conditional release for a final
25 payment, and unconditional release for a final payment.⁵⁹ The statutory forms are
26 inadequate in a number of respects, including:

- 27 • The language of the conditional waiver and release for a progress payment
28 appears to convert the instrument to a mere receipt.
- 29 • Language in the statutory notice appears to preserve contract rights, while
30 waiving lien, stop notice, and payment bond rights for the same amount.

31 The industry operates on the assumption that if the claimant is paid through a
32 given date, all of the claimant's lien, stop notice, and bond rights through that date
33 are waived with the exceptions noted in the release form. The industry believes
34 that the waiver and release forms provide full protection, when in fact they do not.
35 (Some of these concerns may be tempered by case law construing the statutory
36 language to provide for release of a lien with respect to all labor, service,

58. See Civ. Code § 3117.

59. Civ. Code § 3262.

1 equipment, and material to the date of the release, but not to waive other legal
2 remedies to the extent labor, service, equipment, or material has not been paid
3 for.⁶⁰)

4 The proposed law revises the statutory waiver and release forms for clarity and
5 to address these concerns. The forms as revised also identify progress payments
6 covered by earlier conditional releases that have not been paid, and identify the
7 customer to which labor, service, equipment, or material was provided.

8 MISCELLANEOUS MATTERS

9 **Ownership Issues**

10 There are two types of owners under the mechanics lien law — the owner of the
11 work of improvement contracted for, and the owner of the property on which the
12 work of improvement is constructed. These are often the same person, but not
13 necessarily.

14 There is some ambiguity in existing law as to whether a specific provision
15 applies to one type of owner, the other type, or both. In case of ambiguity, the
16 proposed law specifies whether it is the owner of the improvement or the owner of
17 the property that is affected.

18 A few provisions of the mechanics lien law deal with the question of co-
19 ownership.⁶¹ The provisions raise more questions than they resolve. If a statute
20 requires notice by an owner and is silent as to co-ownership, is notice by one
21 effective for all? Is notice to one effective as to all? Does a lien against the interest
22 of one co-owner affect the interests of all co-owners?

23 The proposed law deals systematically with the question of co-ownership. It
24 makes clear that an owner may act on behalf of a co-owner if the owner gives
25 identifying information for the co-owner for which the owner acts. Notice to an
26 owner of an interest is effective as to a co-owner of the interest.

27 Under the proposed law, however, notice to the owner of a leasehold interest
28 would not bind the owner of the fee. The proposed law preserves the existing
29 doctrine of reputed ownership in that circumstance — if the owner of the
30 leasehold is the reputed owner of the fee, notice to the reputed owner may bind the
31 owner of the fee. The proposed law codifies the case law definition of reputed
32 ownership — the reputed owner is a person the claimant reasonably and in good
33 faith believes to be the owner.⁶²

60. *Tesco Controls, Inc. v. Monterey Mechanical Co.*, 124 Cal. App. 4th 780, 21 Cal. Rptr. 3d 751 (2004).

61. A notice of completion may be signed by one of several co-owners on behalf of all; a notice of cessation may be signed by one of several joint tenants or tenants in common on behalf of all (but apparently not by a spouse in the case of community property). In either case, the notice must “recite the names and addresses” of the other co-owners.

62. See *Kodiak Industries, Inc. v. Ellis*, 185 Cal. App. 3d 75, 85, 229 Cal. Rptr. 418 (1986).

1 **Authority of Agent**

2 Existing law refers on occasion to the authority of an owner’s agent,⁶³ or to
3 action by a claimant’s or another person’s agent in other circumstances.⁶⁴ These
4 provisions should not be read to imply that an agent cannot perform other acts
5 under the mechanics lien law.⁶⁵

6 In some instances, verification of a document may be necessary, suggesting that
7 the principal and not an agent should be required to act. But existing law
8 authorizes an agent to make a verification in a number of instances. Moreover, the
9 principal may be an artificial person and action must necessarily be taken through
10 an agent.⁶⁶

11 The proposed law provides systematically that notice by or to, or action by, an
12 agent binds the owner. It also makes clear that the ability of an agent to act on
13 behalf of the principal is limited to the authority conferred by the agency. Thus, to
14 the extent a direct contractor is deemed to be the agent of the principal for the
15 purpose of engaging a subcontractor, the scope of the agency does not include
16 other acts, such as compromise of litigation.

17 **Contract Change**

18 Existing law deals haphazardly with the effect of a contract change⁶⁷ on
19 provisions of the statute relating to the terms of the contract, particularly the
20 contract price. The proposed law deals with the issue globally by defining the
21 terms “contract” and “contract price” to include a contract change, and using those
22 terms consistently throughout the statute.

23 Existing law requires that an owner notify the original contractor and
24 construction lender of a change in the original contract if the change increases the
25 contract amount by 5% or more.⁶⁸ The statute does not specify when the
26 notification must be made, the manner of notification, or the consequences of
27 failure to notify.⁶⁹ Practitioners indicate that this provision is not observed in the

63. For example, a work of improvement is deemed complete when occupied or accepted by the owner or agent. A notice of cessation may be executed by an owner or agent.

64. For example, a lien claimant may act through an agent when executing a waiver and release or when making a claim of lien. See Civ. Code §§ 3084, 3262.

65. Cf. Civ. Code § 2305 (agent may perform acts required of principal).

66. Often, a waiver or claim of lien is signed by a credit manager or other person in the credit department of a claimant.

67. The term “contract change” has replaced “written modification of the contract” as used in former Section 3123. This codifies the effect of *Basic Modular Facilities, Inc. v. Ehsanipour*, 70 Cal. App. 4th 1480, 83 Cal. Rptr. 2d 462 (1990).

68. Civ. Code § 3123(c).

69. The intent may be that if the owner fails to give the required notification, a lien does not cover the amount of the change order. Civ. Code § 3123(a). But if that were the case, it would not be in the owner’s interest to give the notification (except where the change order actually reduces the contract price).

1 industry and serves no useful purpose. The proposed law would eliminate it. **The**
2 **Commission particularly solicits comment on this proposal.**

3 PRELIMINARY NOTICE

4 **Function of Preliminary Notice**

5 To a significant degree the complexity of the existing mechanics lien law is
6 attributable to the preliminary notice requirement and its ramifications. However,
7 preliminary notice serves a number of functions in the operation of the system in
8 its current form.

- 9 (1) Preliminary notice alerts the owner to existence of a potential claim of a
10 subcontractor or material provider, and the corresponding possibility of
11 double payment liability. It enables the owner to monitor the claim and
12 structure payment to the direct contractor so as to ensure that the claimant is
13 paid (for example, by use of a joint check, release, or similar approach) or
14 take whatever other protective measures appear appropriate.
- 15 (2) The preliminary notice provides the owner advance notice of a claim, and
16 thereby helps satisfy due process of law requirements that enable the lien
17 claimant to impose a direct lien on the property.⁷⁰

18 **Simplification of Statute**

19 The preliminary notice statute runs to several pages and is located among the
20 mechanics lien definitions. The statute is substantive. In the proposed law, it is
21 relocated among general provisions. The proposed law also breaks the statute into
22 smaller, more comprehensible pieces, and streamlines and simplifies its wording.

23 **Notice to Construction Lender**

24 Some lien claimants must give preliminary notice to the construction lender as
25 well as to the owner.⁷¹ There are several avenues by which the lien claimant can
26 discover the existence and identity of a construction lender, including building
27 permit records. Under existing law, a building permit is supposed to include
28 information about the construction lender. Failure of the permit to include that
29 information (which is ordinarily the case) does not excuse the duty to give
30 preliminary notice.⁷²

70. In upholding the constitutionality of the remedy, a divided Supreme Court noted that there is a rough approximation of due process in the form of the preliminary notice and an opportunity for the owner to seek judicial relief. *Connolly Dev., Inc. v. Superior Court*, 17 Cal. 3d 803, 553 P.2d 637, 132 Cal. Rptr. 477 (1976). Query whether the lien right of a direct contractor, laborer, or laborer's compensation fund would satisfy this standard, since each of these claimants is excused from the preliminary notice requirement.

71. Civ. Code § 3097(a)-(b).

72. Case law interpreting this requirement indicates that a lien claimant need only check for the existence of a construction lender at the commencement of the lien claimant's work and may give preliminary notice on that basis. The lien claimant is not charged with the obligation continually to monitor public records to see

1 Existing law appears to both (1) require a direct contractor to give a preliminary
2 notice to the construction lender and (2) exempt a direct contractor from the
3 requirement.⁷³ The internal contradiction has not gone unnoticed.⁷⁴ The apparent
4 policy supporting preliminary notice to the construction lender is that, while a
5 direct contractor is properly exempted from the general preliminary notice
6 requirement because known to the owner, a direct contractor should not be exempt
7 from preliminary notice to the lender because, although a direct contractor may be
8 known to the lender, that is not necessarily the case. The proposed law clarifies the
9 requirement that a direct contractor notify the construction lender.

10 **Disciplinary Action Against Subcontractor**

11 Existing law provides that if a subcontractor fails to give a preliminary notice
12 where the contract price exceeds \$400, the subcontractor is subject to disciplinary
13 action under the Contractors State License Law.⁷⁵

14 The proposed law would eliminate this provision. A subcontractor should not be
15 forced to the trouble and expense of serving a preliminary notice in every case.
16 The contract amount may be small enough that the subcontractor is willing to skip
17 enforcement remedies if not paid. Or the subcontractor may simply be willing to
18 take a risk with a responsible contractor.⁷⁶

whether evidence of a construction lender appears at a later date. *Kodiak Industries, Inc. v. Ellis*, 185 Cal. App. 3d 75, 229 Cal. Rptr. 418 (1986).

73. Civ. Code § 3097(b).

74. *Kodiak Industries, Inc. v. Ellis*, 185 Cal. App. 3d 75, 82 n.3, 229 Cal. Rptr. 418 (1986):

The exception of the “contractor” is puzzling here. Presumably it refers to someone other than “all persons who have a direct contract with the owner.” But section 3088 defines a “contract” as an “agreement between an owner and any original contractor providing for the work of improvement or any part thereof.” And section 3095 in turn defines “original contractor” as “any contractor who has a direct contractual relationship with the owner.” As has been noted, “[t]he Mechanic’s Lien Law often is inartfully drawn and leaves much room for doubt, as in this instance.” (Killeen, *The 20-Day Preliminary Notice in Private Construction Work* (1977) 53 L.A. Bar J. 113, 120, fn. 42.) Despite this apparent contradiction because the single word “contractor” is not defined, it has sensibly been construed to mean the general or prime contractor for the entire project. (See *Korherr v. Bumb* (9th Cir. 1958) 262 F.2d 157, 161-162, construing the phrase “except the contractor” in former Code Civ. Proc., § 1190.1, subd. (h) [Stats. 1951, ch. 1382, § 1, p. 3305], the predecessor of § 3097, as referring to the general or prime contractor; see also 1 Miller & Starr, *Current Law of Cal. Real Estate* (rev. pt. 2, 1975) Pre-lien Notice, § 10:20, pp. 550-552, noting that if the term “contractor” referred to the original contractor, § 3097, subd. (b) “would read that ‘all persons having a direct contract with the owner, except any contractor who has a direct contractual relationship with the owner’ must give the notice to the lender.”) (*Ibid.*)

See also Burden, *Counter-Revolutionary Changes in Construction Work Remedies*, 2 U.S.F. L. Rev. 216, 217 n.4 (1968) (“It is apparent from the scheme of the legislation that the person commonly referred to as the general contractor is the one referred to in [Section 3097(b)] as the ‘contractor.’”)

75. Civ. Code § 3097(h), ¶ 1.

76. There is an argument that the requirement is necessary to protect the interest of an express trust fund. See Civ. Code § 3097(h), ¶ 2. However, an express trust fund may exercise lien rights without the need for a preliminary notice. Civ. Code § 3097(a). Moreover, a subcontractor’s giving of a preliminary notice does

1 **County Recorder**

2 A copy of the preliminary notice may be recorded in the recorder’s office.
3 Recordation of the notice obligates the county recorder to provide notification
4 when a notice of completion or notice of cessation of labor is recorded.⁷⁷

5 The preliminary notice recording procedure is seldom used for several reasons:

- 6 (1) Recording fees may be high.
- 7 (2) A potential mechanics lien claimant usually has little difficulty in keeping
8 track of job progress sufficiently to be sure of recording the claim of
9 mechanics lien within 30 days after completion of the project.
- 10 (3) Failure of the county recorder to give notice does not excuse prompt
11 recording of a mechanics lien.

12 The process whereby a claimant may file a preliminary notice with the county
13 recorder and the county recorder should notify claimants when a notice of
14 completion or cessation is recorded is of marginal value and serves to complicate
15 the statute. The proposed law eliminates the provision in the interest of
16 simplifying mechanics lien law.

17 **MECHANICS LIEN**

18 **CLARIFICATION AND SIMPLIFICATION OF LIEN LAW**

19 **Laborers Compensation Fund**

20 The law gives lien rights to a laborer’s employment benefits fund that is not paid
21 the amount due. These provisions have been heavily litigated and the subject of
22 significant legislative attention. A key issue has been federal preemption under
23 ERISA.⁷⁸

24 However, the statute itself is confusing. For example, the statute defines
25 “laborer” to include such a benefit fund, but generally ignores the definition in
26 favor of specific provisions that prescribe rights and duties relating to the fund.
27 Moreover, the statute grants extensive remedies to a laborer’s compensation fund⁷⁹
28 but appears to limit the lien right of an express trust fund.⁸⁰ The preliminary notice
29 statutes refer sometimes to an express trust fund, sometimes to an express trust
30 fund as described in Section 3111, and sometimes to a “laborer” in its broadly

not guarantee that the subcontractor will ever take any further steps to record a claim of lien or to enforce the lien.

77. Civ. Code § 3097(o).

78. The current version of the statute appears to be free of ERISA preemption. See *Betancourt v. Storke Housing Investors*, 31 Cal. 4th 1157, 82 P. 3d 286, 8 Cal. Rptr. 3d 259 (2003).

79. Civ. Code § 3089(b).

80. Civ. Code § 3111.

1 defined sense including a laborer’s compensation fund.⁸¹ It is not clear whether
2 these differences in treatment are intentional, or are simply the result of
3 inconsistent drafting over several legislative sessions.

4 The proposed law simplifies drafting by creating a new term — “laborers
5 compensation fund” — and using the term consistently whenever rights and duties
6 relating to such a fund are in issue. This also has the effect of harmonizing the
7 provisions where different treatment probably was not intended.

8 **Use of Material in Structure**

9 A material supplier has a lien for material that is provided “to be used or
10 consumed in” a work of improvement.⁸² The implication of this language is that
11 the material supplier is entitled to the lien whether or not the material is actually
12 used in the work of improvement.

13 However, case law is that the material must actually be used in the work of
14 improvement in order for the material supplier to have a lien.⁸³ This interpretation
15 of the statutes stems from the unjust enrichment theory underlying the mechanics
16 lien right — a person whose material permanently improves real property should
17 be paid because value has been added to the property. If the material does not
18 actually improve the property, the material supplier has no stake in the property.

19 A material supplier must prove that the material was actually used in the
20 particular construction project, and also that it was provided with that intent.
21 Delivery provides “some evidence of use and consumption if coupled with other
22 evidence tending to show use.”⁸⁴ But mere delivery does not create a presumption
23 of use.

24 Once a material supplier has delivered material to a jobsite it may be impractical
25 to monitor construction to determine whether the material was actually used on the
26 job. Proof problems may be difficult where materials are fungible.

27 Under the proposed law, delivery of materials to the jobsite would create a
28 rebuttable presumption that the materials were used in the construction.

29 **Notice of Claim of Lien**

30 There is no requirement under existing law that the lien claimant notify the
31 owner when a claim of lien is recorded. The existence of a lien may only come to
32 the owner’s attention when the owner tries to refinance or sell the property. At that
33 time, it may be difficult to locate the lien claimant to obtain a release, and it will
34 be time consuming and costly to obtain judicial relief.

81. Civ. Code § 3097.

82. Civ. Code §§ 3090, 3110.

83. Consolidated Elec. Distributors v. Kirkham, Cnaon & Kirkham, Inc., 18 Cal. App. 3d 54, 58, 95 Cal. Rptr. 673 (1971).

84. Marsh & Marsh, California Mechanics’ Lien Law and Construction Industry Practice § 2.30 (6th ed. 2003).

1 Until 2004, the county recorder was required to notify a property owner when an
2 involuntary lien of any kind (not just a mechanics lien) was recorded against the
3 property.⁸⁵ The notification requirement is no longer mandatory; the law
4 encourages, but does not mandate, county recorder notice. Under current practice,
5 a county recorder will not send notice unless requested to do so and is paid a fee
6 for the service by the lien claimant.⁸⁶

7 The law facilitates a claim of lien. The claimant may record a claim of lien that
8 encumbers property on a simple allegation that money is owed, without bonding
9 against damage caused by a false claim.⁸⁷ This procedure has been upheld against
10 a due process challenge — the property owner has preliminary notice of a
11 potential claim and, on recordation of a claim of lien, can bring an immediate
12 court action to discharge a false claim, assuming the owner is aware of the
13 recordation.⁸⁸

14 The constitutionality of the mechanics lien law, as well as its fairness, would be
15 enhanced if the lien claimant were required to notify the owner on recording a
16 claim of lien against the property. The requirement would be enforced by a
17 prohibition against recordation of a claim of lien unless accompanied by proof of
18 service of notice on the owner. The proposed law would implement this policy.

19 **Lien Release Bond**

20 The owner may obtain release of the property from a claim of lien by giving a
21 release bond equal to 1-1/2 times the amount of the claim.⁸⁹ By comparison a stop
22 notice release bond must be in an amount 1-1/4 times the claimant's claim. The
23 greater amount required for a lien release bond is anomalous, since the lien release
24 bond does not cover attorney's fees in a proceeding to enforce the claim, whereas
25 the stop notice release bond may be required to cover attorney's fees awarded in a
26 proceeding to enforce the claim. The proposed law standardizes both release bonds
27 at the 1-1/4 level.

28 **Time for Commencement of Enforcement Action**

29 Under existing law, a lien enforcement action must be commenced within 90
30 days after recordation of the claim of lien, unless an extension of credit is obtained
31 within that time, in which case an enforcement action must be commenced within
32 90 days of the extension, but in no event more one year after completion of the

85. Gov't Code § 27297.5.

86. There are notable exceptions to the general practice. Orange County does not send notice at all, even on request; it is up to a lien claimant to notify the owner. Los Angeles County sends the notice automatically 10 days after filing, unless the lien claimant does not include a mailing address for the owner on the claim of lien.

87. This is mitigated by the requirement that a claim of lien be verified, which may help deter a false claim.

88. *Connolly Dev., Inc. v. Superior Court*, 17 Cal. 3d 803, 553 P.2d 637, 132 Cal. Rptr. 477 (1976).

89. Civ. Code § 3143.

1 work of improvement. As a matter of practice, a title company will not insure title
2 until a full year has elapsed, whether or not an extension of credit is recorded.

3 The proposed law seeks to expedite release of property from the encumbrance of
4 a lien in that circumstance by giving statutory protection to a bona fide purchaser
5 that acquires property beyond the 90-day enforceability period of the lien if no lis
6 pendens is recorded before the time of acquisition.⁹⁰ The intent is to enable a title
7 company to insure around the recorded claim of lien.

8 **Attorney's Fees**

9 Existing law allows attorney's fees in some types of stop notice and payment
10 bond enforcement actions, but not for enforcement of a mechanics lien.⁹¹ **The Law
11 Revision Commission seeks public comment concerning the disparity of
12 treatment.**

13 INVALID OR UNENFORCEABLE CLAIM OF LIEN

14 A person that has not been paid for labor, service, equipment, or material
15 provided for a work of improvement may record a claim of lien against the
16 property. No preliminary judicial determination of probable validity of the claim is
17 necessary, nor is any security required.

18 A claim of lien may prove to be unenforceable, but remains as a cloud on title.
19 This can happen, for example, where the owner has paid off the amount owed but
20 the lien claimant has not provided a release of the lien. It can also happen where
21 the lien claimant has not acted to enforce the lien within the statutory period (90
22 days after recordation). Or the lien claimant may have falsely recorded the claim
23 of lien for purposes of obtaining leverage in a dispute with the owner or for other
24 reasons.

25 The Law Revision Commission regularly receives communications from owners
26 whose property is burdened with an invalid or unenforceable claim of lien but who
27 lack an effective remedy. The Commission has no statistics concerning how
28 common this circumstance is, but the communications demonstrate the utility of a
29 curative provision.

30 An owner has some remedies under existing law:

- 31 (1) A claim of lien made with intent to defraud is invalid.⁹²
32 (2) An owner may post a release bond.⁹³

90. The proposed law allows an extra 10 days for recordation of a lis pendens due to the likelihood that an enforcement action will be commenced at the end of the 90 day enforcement period.

91. *Abbett Elec. Corp. v. California Fed. Sav. & Loan Ass'n*, 230 Cal. App. 3d 355, 281 Cal. Rptr. 362 (1991).

92. Civ. Code § 3118.

93. Civ. Code § 3143.

- 1 (3) An owner may obtain a release order if the lien claimant fails to enforce the
2 lien within statutory time limits.⁹⁴
- 3 (4) Under case law, an owner may seek declaratory and injunctive relief against
4 an invalid claim immediately on receipt of a preliminary notice or on the
5 filing of a claim of lien.

6 None of these remedies is expedient. A determination that a claim of lien has
7 been made with intent to defraud requires a court proceeding. A release bond may
8 be unavailable or too costly for many owners. The release order process is not
9 available for immediate attack on a fraudulent lien, but must await the lien
10 claimant's inaction for the statutory period. Court remedies are costly and time
11 consuming. It is easy to impose a lien but hard to clear the record of it.

12 The proposed law includes a number of provisions that address the problem. The
13 proposals include (1) improvement of the judicial procedure for release of a claim
14 of lien, (2) protection of a good faith purchaser or encumbrancer from a stale
15 claim of lien, and (3) common law damages for fraudulently recording a claim of
16 lien.

17 **Judicial Procedure for Release of Lien**

18 Existing law provides an expedited court proceeding for release of a claim of
19 lien that is unenforceable because neither a *lis pendens* nor an extension of credit
20 has been recorded within the 90-day enforceability period.

21 *Extension of Credit*

22 The only ground for expedited release under existing law is that the lien
23 claimant has failed to commence an enforcement action on the lien within the
24 statutorily required 90 days. A lien claimant may extend the 90-day enforceability
25 period for up to a year by obtaining an extension of credit.

26 There is some confusion in the case law concerning who may agree to an
27 extension of credit on behalf of the owner.⁹⁵ In *Dorer v. McKinsey*,⁹⁶ the lien
28 claimant was a subcontractor that had not been paid by the direct contractor. The
29 lien claimant recorded an extension of credit without the property owner's
30 consent. The court held the property owner's consent was not necessary, since the
31 debtor in this case was the direct contractor rather than the owner.

32 The direct contractor is in theory the owner's agent in engaging a subcontractor
33 to provide labor or materials. Whether the scope of the agency should be
34 considered to extend to waiver of the owner's statutory rights is doubtful. It would
35 defeat the purpose of the law to allow the direct contractor to waive a protection

94. Civ. Code § 3154.

95. An extension of credit can be granted only by mutual agreement between the lien claimant and the debtor. The claimant may not unilaterally grant an extension. *Richards v. Hillside Development Co*, 177 Cal. App. 2d 776, 780, 2 Cal. Rptr. 693, 696 (1960).

96. 188 Cal. App. 2d 199, 200, 10 Cal. Rptr. 287, 288 (1961).

1 intended for the owner.⁹⁷ The proposed law makes clear that the owner must agree
2 to an extension of credit.

3 **90 Day Delay**

4 Under existing law, the judicial release remedy is limited. Relief is not available
5 until 90 days after recordation of the claim, and the only basis for relief is failure
6 of the lien claimant to proceed promptly. The waiting period is problematic, as is
7 the ground for relief. If the lien was fraudulently recorded, the owner should be
8 able to challenge it in court immediately. It was the assumption of the availability
9 of prompt judicial relief that satisfied the California Supreme Court of the
10 constitutionality of the mechanics lien law.⁹⁸

11 The proposed law would allow an immediate action by the owner to remove the
12 lien on the basis of its invalidity, without the 90 day delay.

13 **Other Improvements**

14 The proposed law would make a number of related improvements to the
15 expedited release procedure:

- 16 (1) The grounds for the expedited release procedure would be expanded to
17 include (i) the claim was made with intent to defraud or slander title, (ii) the
18 claim has been paid in full, (iii) no work has been done, (iv) the lien
19 claimant was unlicensed for all or part of the time of performance of the
20 work for which the lien is claimed, or (v) there is a final judgment in another
21 proceeding invalidating the claim on which the lien is based.
- 22 (2) As a prerequisite to use of the expedited procedure, the owner must, at least
23 10 days before commencement of the proceeding, demand that the lien
24 claimant execute and record a release of the claim of lien. Relief is
25 conditioned on failure of the lien claimant to release the lien on demand of
26 the owner.
- 27 (3) The petition in the proceeding would include more detail concerning the
28 facts on which the petition is based.
- 29 (4) The court must make its determination within 75 days after commencement
30 of the proceeding.
- 31 (5) The \$2,000 cap on the award of attorney's fees to the prevailing party is
32 eliminated.
- 33 (6) The statute makes clear that the release order issued by the court is a
34 recordable instrument.

97. Cf. 10 Miller & Starr, California Real Estate § 28:68, at 217 (3d ed. 2001) (the conclusion of *Dorer v. McKinsey* is “bizarre and of questionable value as future precedent”).

98. *Connolly Dev., Inc. v. Superior Court*, 17 Cal. 3d 803, 827, 132 Cal. Rptr. 477 (1976).

1 **Bona Fide Purchaser or Encumbrancer**

2 A claim of lien is voided by operation of law, without the need for a court order,
3 if no enforcement action has been commenced within the statutory time limits.⁹⁹
4 This is not an efficacious remedy because (1) the commencement of an
5 enforcement action is an off-record event that a title insurer cannot readily
6 determine from inspection of the record, and (2) there is the possibility of an
7 extension of credit that extends enforceability of the lien.

8 The proposed law addresses these problems by providing that a lien expires and
9 is unenforceable if no lis pendens or extension of credit is recorded within the
10 statutory period for enforcement. The objective of this provision is to enable a title
11 company to insure title immediately on expiration of the statutory enforcement
12 period without having to wait for a full year after a lien is recorded. The proposed
13 law makes clear that, on expiration of the statutory period, the claim of lien “does
14 not constitute actual or constructive notice of any of the matters contained,
15 claimed, alleged, or contended in the claim of lien, or create a duty of inquiry in
16 any person thereafter dealing with the affected property.”¹⁰⁰

17 **Common Law Damages for Fraudulent Claim of Lien**

18 A claim of lien is invalid if made with intent to defraud. The existing statute
19 does not address potential liability of a fraudulent claimant. The matter is left to
20 common law. One problem with reliance on common law remedies is that under
21 California law a claim of lien in conjunction with an enforcement action is
22 privileged.¹⁰¹

23 A claim of lien should not be privileged if made with fraudulent intent or intent
24 to slander title.¹⁰² The proposed law makes clear that common law remedies are
25 available against a lien claimant that records a fraudulent claim of lien. Relief
26 would be conditioned on the lien claimant’s failure to release the lien in response
27 to the owner’s request. The burden of proof would be on the owner that the claim
28 of lien was made with intent to defraud or slander title.

99. Civ. Code § 3144(b).

100. Cf. Code Civ. Proc. § 405.60.

101. See, e.g., *Pisano & Associates v. Hyman*, 29 Cal. App. 3d 1, 105 Cal. Rptr. 414 (1972).

102. Slander of title is the false and unprivileged disparagement of title to property resulting in pecuniary damage. 5 B. Witkin, *Summary of California Law Torts* § 642 (10th ed. 2005).

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STOP PAYMENT NOTICE

Terminology

Stop Payment Notice

The “stop notice” is a directive to the owner, construction lender, or other person holding construction funds not to pay out the funds until resolution of the dispute over payment. The term “stop notice” is somewhat cryptic, and can be confused with the “stop work order”. The proposed law replaces the term with the more descriptive “stop payment notice”.

Bonded Stop Payment Notice

A stop payment notice may be bonded, which provides the claimant giving the notice greater rights. For many purposes, the law treats a bonded stop payment notice the same as an unbonded stop payment notice. In order to simplify drafting, the proposed law uses the generic term “stop payment notice” to include both a bonded and an unbonded notice, except where a bonded notice receives special treatment.

Giving Stop Payment Notice

Existing law refers inconsistently to giving the notice, filing the notice, or serving the notice. A stop payment notice is not filed in the traditional sense of registering it with the county recorder or lodging it with the clerk of court. Nor is it served with the formalities of court process. It is delivered by the claimant to the owner or construction lender either personally or by mail. The proposed law standardizes the giving of the notice.

Contents of Notice

Amount of Claimant’s Claim

Existing law requires a claimant to include in a stop payment notice the amount in value, as near as may be, of the work already provided and of the whole agreed to be provided. The meaning of the phrase “as near as may be” is obscure. Presumably it refers to the market value, rather than the contract price, of the claimant’s work. Perhaps it is intended to mean the claimant’s good faith and reasonable estimate of the value of the work.

The proposed law replaces the existing standard with the requirement that the notice state the claimant’s demand after deducting all just credits and offsets. That is the same standard used for a claim of lien, and will help achieve consistency in the statute.

1 ***Claim for Contract Changes and Damages for Breach***

2 The statute governing the stop payment notice does not deal with contract
3 changes. By contrast, the mechanics lien allows a claimant to include in the claim
4 of lien an amount due for written modification of the contract or as a result of
5 rescission, abandonment, or breach of the contract.¹⁰³ The proposed law adopts the
6 same standard for both.

7 No court has yet addressed whether a stop payment notice can include amounts
8 due based on breach of contract and other items included in the claim of
9 mechanics lien. Many practitioners believe the stop payment notice is co-extensive
10 with the mechanics lien and whatever amounts are includable in a mechanics lien
11 are likewise includable in a stop payment notice. The proposed law clears up the
12 ambiguity by stating expressly that these items may be included in a claim covered
13 by a stop payment notice. There is no reason for inconsistency between the
14 remedies with respect to the claims covered by them.

15 **Demand for Notice**

16 An owner may demand that a claimant give the owner a stop notice. If the
17 claimant fails to do so, the claimant forfeits the mechanics lien right.¹⁰⁴ The
18 proposed law makes clear that only an unbonded stop payment notice may be
19 required under this provision.

20 **Release Bond for Funds Withheld Pursuant to Notice**

21 ***Who May Give Bond***

22 Existing law provides that “an owner, construction lender, direct contractor, or
23 subcontractor” that disputes the correctness or validity of a stop payment notice
24 may obtain release of funds withheld pursuant to the notice by giving the person
25 withholding the funds a release bond.¹⁰⁵ There is no apparent reason why a
26 material supplier or other interested person ought not to be able to obtain release
27 of funds by giving an appropriate bond. The proposed law simplifies the statute by
28 eliminating the restriction on persons authorized to give a release bond.

29 ***Conditions for Giving Bond***

30 Under existing law the release bond remedy is limited to circumstances where a
31 person disputes the correctness or validity of a stop payment notice. The proposed
32 law simplifies the statute by allowing a release bond in any circumstances.

103. See Civ. Code § 3123.

104. “Any person who shall fail to serve such a Stop Notice after a written demand therefor from the owner shall forfeit his right to a Mechanic’s Lien.” Civ. Code § 3158.

105. Civ. Code § 3171.

1 **Sureties on Bond**

2 The release bond for funds held pursuant to a stop payment notice is analogous
3 to a lien release bond. Under existing law, a lien release bond requires an admitted
4 surety insurer, whereas the stop payment notice release bond does not. Because the
5 two bonds are similar in function and the release bond stands in place of funds or
6 property that have been sequestered for a claim, the proposed law requires an
7 admitted surety insurer for a stop payment notice release bond.

8 **Release of Notice or Reduction of Amount of Claim**

9 Legislation operative January 1, 2006, makes clear that the general statutory
10 waiver and release forms¹⁰⁶ are inapplicable to a claimant's release of a stop
11 payment notice or reduction of the amount claimed in the notice. The new
12 provision is difficult to interpret, since parts of it appear to relate only to a stop
13 payment notice given to the owner and other parts appear to relate to any stop
14 payment notice, whether given to the owner or to a construction lender. The
15 anomaly is perhaps explained by the fact that the drafters may have had in mind
16 the public work stop notice and not the private work stop notice.¹⁰⁷ However, by
17 its terms, the provision would apply to a private work as well as a public work.

18 **The Law Revision Commission solicits public comment concerning the**
19 **application of the new provision.**

20 **Duty to Withhold Funds**

21 Existing law states that if the owner is given a stop payment notice, it is the duty
22 of the owner to:¹⁰⁸

23 withhold from the original contractor or from any person acting under his or her
24 authority and to whom labor or materials, or both, have been furnished, or agreed
25 to be furnished, sufficient money due or to become due to such contractor to
26 answer such claim and any claim of lien that may be recorded therefore.

27 This statute is garbled. It is unclear whether the person from which funds are to be
28 withheld must be acting under authority of the owner or of the original contractor,
29 and whether labor or materials must have been furnished to the owner, the original
30 contractor, or the person acting under authority of one of them.

31 The comparable provision of the public work stop payment notice, from which
32 this statute evolved, states simply that the public entity must withhold from the
33 direct contractor, or from any person acting under the direct contractor's authority,
34 an amount sufficient to pay the claim stated in the notice.¹⁰⁹ That interpretation is
35 sensible, and the proposed law adopts it.

106. The forms are prescribed in Civil Code Section 3262.

107. See, e.g., Assembly Committee on Judiciary Analysis of SB 130 (June 6, 2005).

108. Civ. Code § 3161.

109. Civ. Code § 3186.

1 The proposed law also omits the requirement that funds be withheld to cover the
2 amount claimed both in the stop payment notice and “in any claim of lien that is
3 recorded.” The claim of lien reference is problematic since any amount withheld
4 pursuant to a stop payment notice reduces the claim of lien. **The Law Revision
5 Commission solicits comment on this issue.**

6 **Enforcement of Payment of Claim Stated in Notice**

7 Existing law requires a stop payment notice claimant, within five days after
8 commencement of an enforcement action, to notify persons that have been given
9 the stop payment notice. The five day notice appears to supplement and not
10 replace normal service of process requirements.

11 The consequences of failure to give the five day notice are unclear. The *Sunlight
12 Electric*¹¹⁰ case indicates that the five day notice requirement is directory rather
13 than mandatory.

14 That case arose in the context of a public work. Its rationale is that in a public
15 work, the stop payment notice substitutes for a mechanics lien, and therefore
16 should be construed liberally in favor of a claimant, just as a mechanics lien is
17 construed liberally in the private work context.

18 The same consideration does not apply in the context of a stop payment notice
19 for private work. In a private work, the stop payment notice augments, and is not
20 exclusive of, the mechanics lien remedy.

21 **The Law Revision Commission solicits comment on whether the five day
22 notice requirement after commencement of a stop payment notice proceeding
23 should be made mandatory, in place of the existing directory provision.**

24 **PAYMENT BOND**

25 Under the mechanics lien law, the owner may avoid the full impact of a lien, and
26 particularly the potential for double payment liability, by obtaining a payment
27 bond from the contractor. A subcontractor, material supplier, or other party that is
28 not paid by the contractor may supplement its lien remedy by recovering on the
29 payment bond.

30 A bond covering 50% of the contract price protects the owner against having to
31 pay more than the contract price if the bond is recorded before commencement of
32 work. A bond covering 75% of the contract price gives a construction lender’s
33 security interest a priority over liens.

34 A payment bond is relatively inexpensive, and it would seem to be a simple
35 solution for many of the complexities of the mechanics lien law. But the Law
36 Revision Commission understands that many private work contractors are
37 unbondable, making the remedy largely illusory. The Commission has been unable

110. *Sunlight Elec. Supply Co. v. McKee*, 226 Cal. App. 2d 47, 37 Cal. Rptr. 782 (1964).

1 to collect statistics on the frequency of a payment bond in a private work of
2 improvement.¹¹¹

3 **Limitation of Owner’s Liability**

4 If the owner files a copy of the contract for the work of improvement with the
5 county recorder, and records a payment bond in an amount not less than the 50%
6 of the contract price, the owner’s liability for lien claims is limited to the contract
7 price for the work of improvement.

8 There is some statutory confusion about whether the owner’s liability is limited
9 “in all cases”¹¹² or only “where it would be equitable to do so.”¹¹³ The equitable
10 standard appears to be used in practice, but its use is limited to circumstances
11 where sureties are insufficient.¹¹⁴

12 The proposed law resolves the issue by codifying the limitation of the owner’s
13 liability where the payment bond is given with sufficient sureties.

14 **Bond Underwriter Licensed by Department of Insurance**

15 Existing law provides that if a construction lender requires a payment bond as a
16 condition of making the loan and accepts the bond that is offered, the lender may
17 question the bond and go back on the loan commitment “only if the bond
18 underwriter was licensed by the Department of Insurance.”¹¹⁵ The provision seems
19 counterintuitive — a bond given by a licensed surety is perhaps the one type a
20 lender should not be allowed to question.

21 The provision was enacted as part of an effort to preclude a construction lender
22 from reneging on a loan commitment.¹¹⁶ It seems probable that the problematic
23 language was the result of a last minute political compromise on the bill that was
24 inartfully executed. It is likely that the intent was to enable the lender to question
25 the bond unless executed by a licensed surety.¹¹⁷ The proposed law codifies that
26 rule.

111. The situation with respect to a public work is different. See discussion of “Public Works Contract”
infra.

112. Civ. Code § 3236.

113. Civ. Code § 3235.

114. See, e.g., *S.R. Frazee Co. v. Arnold*, 46 Cal. App. 74, 76, 188 P. 822 (1920) (personal sureties were family members of contractor and had insufficient assets — “it would not be equitable to restrict the recovery against the owner to the amount of the contract price”). See also *Sudden Lumber Co. v. Singer*, 103 Cal. App. 386, 284 P. 477 (1930); *Simpson v. Bergmann*, 125 Cal. App. 1, 13 P.2d 531 (1932).

115. Civ. Code § 3237.

116. See SB 1851 (Ayala) (1984).

117. *Miller & Starr*, 10 California Real Estate § 36:4 at 11 n.10 (3d ed. 2001) interprets the provision in this way.

1 **Statute of Limitations for Enforcement of Bond**

2 Existing law provides a six month statute of limitations for an action against a
3 surety on a payment bond recorded before completion of a work of
4 improvement.¹¹⁸ In the interest of simplicity and standardization, the proposed law
5 extends this provision to an action against the principal, and eliminates the
6 provision for shortening the statute of limitations.¹¹⁹

7 It has been suggested to the Commission that the owner be required to provide a
8 copy of a payment bond to each claimant that has given preliminary notice. That
9 would help direct the claimant to the bond as a source of recovery rather than to
10 the property or to a loan fund. The consequence of failure to provide a copy of the
11 bond would be to toll the six month statute of limitations for enforcement of a
12 recorded bond until a copy is provided. **Such a provision is not included in the
13 proposed law, but the Commission solicits public comment on the concept.**

14 **OTHER REMEDIES**

15 **Stop Work Notice**

16 The law provides a contractor that has not been timely paid some practical
17 leverage — the contractor may serve notice on the owner that the contractor
18 intends to stop work unless paid within 10 days. Thereafter, the contractor may
19 stop work on the project without liability to the owner or to subcontractors.

20 This remedy was enacted in 1998 in response to case law invalidating a “pay if
21 paid” clause in a contract between the contractor and a subcontractor or material
22 supplier.¹²⁰ The new remedy enables the contractor to stop work and limit potential
23 losses on the project.

24 The proposed law preserves the substance of the statute. It denominates the
25 remedy a stop work “notice” rather than an order, since it is not a court order and
26 it should be given and proved in the same manner as other notices under the
27 mechanics lien law.

28 The proposed law also eliminates existing provisions that appear to address
29 subcontractor liability. These provisions are apparently an artifact of the
30 legislative process. Under the law as enacted, only the direct contractor may give a
31 stop work notice.

32 **Security for Large Project**

33 In addition to the classical remedies of the lien, stop notice, and payment bond,
34 the mechanics lien law now requires that the owner of a large construction project

118. Civ. Code § 3240.

119. Civ. Code § 3239.

120. Under *Wm. R. Clarke Corp. v. Safeco Ins. Co.*, 5 Cal. 4th 882, 938 P. 2d 372, 64 Cal. Rptr. 2d 578 (1997), a contractor that has not been paid by the owner must nonetheless pay subcontractors and material suppliers.

1 provide security for payment of the contractor.¹²¹ The security may take the form
2 of a payment bond, irrevocable letter of credit, or escrow account. The remedy
3 relates only to a private work of improvement, not to a public work.

4 The provision for security responds to the same concern as the stop work notice
5 — case law invalidating a “pay if paid” clause in a contract between the prime
6 contractor and a subcontractor or material supplier.¹²²

7 The remedy is contained in one extremely long section of the code.¹²³ The
8 proposed law substantially rewrites the statute to make it more comprehensible (by
9 simplifying language, standardizing terminology, breaking it into smaller pieces,
10 and reorganizing it). The revision is nonsubstantive.

11 PUBLIC WORKS CONTRACT

12 The lien remedy is not available in a public works contract. The principal
13 remedy for a subcontractor or material supplier that has not been paid by the direct
14 contractor is the stop payment notice or the payment bond.

15 The proposed law relocates the public works contract remedies to the Public
16 Contract Code from their current location among the mechanics lien provisions of
17 the Civil Code.¹²⁴

18 GENERAL PROVISIONS

19 **Notification**

20 As with private work remedies, the public work remedies contain notice
21 requirements that vary unnecessarily with respect to contents of the notice, persons
22 served, addresses, manner of giving notice, proof of service, and the like. The
23 proposed law standardizes notice provisions to replace the many variants, to the
24 extent practicable.

25 Existing law specifies that preliminary notice to the state is delivered to the
26 Department of General Services or Department of Transportation.¹²⁵ This
27 provision is unduly narrow for notice under a public works contract.

28 The proposed law would require that notice to a public entity be addressed to the
29 disbursing officer of the public entity (or another address specified in the public
30 works contract). The disbursing officer issues the payments to the direct contractor
31 and is in the best position to keep the file of preliminary notices and verify that
32 they are in hand when it receives a stop payment notice.

121. The new requirement was enacted in 2002.

122. See discussion of “Stop Work Notice” *supra*.

123. See Civ. Code § 3110.5.

124. See discussion of “Drafting Considerations” *supra*.

125. Civ. Code § 3098.

1 **Jurisdiction and Venue**

2 The jurisdiction and venue provisions of existing law refer variously to the
3 “proper court,”¹²⁶ “the appropriate superior court,”¹²⁷ “the court first acquiring
4 jurisdiction,”¹²⁸ and “the superior court in the county in which the private work of
5 improvement is located.”¹²⁹

6 Reference to the court first acquiring jurisdiction is evidently a relic of the pre-
7 unification era when jurisdiction under the mechanics lien law could be in the
8 municipal court or the superior court, depending on the amount in controversy.
9 The proposed law does not eliminate that provision since it could have continued
10 relevance in the context of a work of improvement that straddles a county line.
11 That may be a significant factor in a public work such as a road or waterway. If
12 the public work extends across a county line, the superior court in either county
13 could have jurisdiction.¹³⁰

14 **Assignment**

15 A direct (or “original”) contractor is a person that contracts directly with a
16 public entity on a public works contract. The existing statute refers to a direct
17 contractor’s assignee in two instances.¹³¹ Yet it is apparent that the statute should
18 apply systematically to a direct contractor’s assignee as well as to the direct
19 contractor. The proposed law expands the definition of “direct contractor” to
20 include an assignee.

21 **Completion**

22 Completion triggers time limits within which a claimant must act in order to
23 exercise the stop payment notice and payment bond remedies under a public works
24 contract.

25 The term is defined in Civil Code Section 3086:

26 3086. “Completion” means, in the case of any work of improvement other than
27 a public work, actual completion of the work of improvement. Any of the
28 following shall be deemed equivalent to a completion:

29 (a) The occupation or use of a work of improvement by the owner, or his agent,
30 accompanied by cessation of labor thereon.

31 (b) The acceptance by the owner, or his agent, of the work of improvement.

126. Civ. Code §§ 3144, 3146, 3154, 3210.

127. Civ. Code § 3201.

128. Civ. Code §§ 3175, 3214.

129. Civ. Code § 3260.2.

130. See Civ. Code § 3214 (joinder, consolidation, and interpleader).

131. Existing law gives a stop payment notice priority over a direct contractor’s assignment of receivables, but a public entity may make payment to the direct contractor or assignee if payment is made before the public entity is served with a stop payment notice. Civ. Code §§ 3187, 3193.

1 (c) After the commencement of a work of improvement, a cessation of labor
2 thereon for a continuous period of 60 days, or a cessation of labor thereon for a
3 continuous period of 30 days or more if the owner files for record a notice of
4 cessation.

5 If the work of improvement is subject to acceptance by any public entity, the
6 completion of such work of improvement shall be deemed to be the date of such
7 acceptance; provided, however, that, except as to contracts awarded under the
8 State Contract Act, Chapter 3 (commencing with Section 14250), Part 5, Division
9 3, Title 2 of the Government Code, a cessation of labor on any public work for a
10 continuous period of 30 days shall be a completion thereof.

11 The statute causes a number of difficulties of interpretation in its application to a
12 public works contract.

13 *Actual Completion or its Equivalent*

14 The first sentence of Civil Code Section 3086 defines completion as “actual
15 completion” except in the case of a public work. The public work exception
16 apparently also extends to the other grounds for completion (occupation or use,
17 acceptance, and cessation of labor) set out in subdivisions (a)-(c) of the section,
18 but this is far from clear. The proposed law makes this clear.

19 *Acceptance by a Public Entity*

20 The unnumbered paragraph at the end of Section 3086 does apply to a public
21 work. The first clause — a work of improvement that is subject to acceptance by a
22 public entity — applies to both a public work and a private work. A private work
23 of improvement may be subject to acceptance by a public entity, particularly
24 where the private work is infrastructure that is to be conveyed to the public entity
25 as an exaction for approval of a land development project.

26 With respect to a public work, the work is always subject to acceptance by the
27 public entity. Thus, completion of a public works contract will ordinarily occur on
28 acceptance by the public entity.

29 *Cessation of Labor*

30 There may be circumstances where completion of a public work is deemed to
31 occur even though there has been no acceptance by the public entity. The second
32 clause of the unnumbered paragraph at the end of Section 3086 deals with one
33 such circumstance — cessation of labor. Cessation of labor on a public work for a
34 continuous period of 30 days is considered completion for purposes of exercise of
35 the stop payment notice and payment bond remedies. This should be compared
36 with the rule for private work, where cessation of labor is generally not considered
37 completion until 60 days have elapsed.¹³²

132. Civ. Code § 3086(c).

1 Is there a sound reason to provide a different period of time for completion by
2 cessation of labor on a public work of improvement and on private work of
3 improvement? The concept that cessation of labor for 30 days is deemed
4 completion entered California law in 1887. That was extended to 60 days in the
5 case of a private work in 1951, but there is no legislative history to shed light on
6 the reasons, if any, for the difference in treatment.¹³³

7 **The Law Revision Commission solicits public comment on whether the law**
8 **governing a public work and a private work should be harmonized on this**
9 **point.**

10 *Contract Awarded Under State Contract Act*

11 The second clause of the unnumbered paragraph at the end of Section 3086
12 excludes from the 30 day cessation rule a contract awarded under the State
13 Contract Act.¹³⁴

14 The scope of the State Contract Act is complex. The act covers major state
15 construction projects, including those of the Departments of Water Resources,
16 General Services, Boating and Waterways, Corrections, and Transportation. Many
17 state projects are not covered by the act.

18 The net result is that the 30 day cessation rule applies to all local public works
19 contracts and many, but not all, state public works contracts.

20 *Notice of Cessation*

21 In the case of a private work, an owner may record a notice of cessation after
22 labor has ceased for 30 days or more, and completion is deemed to have occurred
23 at that time.¹³⁵ May a public entity — the “owner” of a public work — also record
24 a notice of cessation under the statutory scheme?

25 The Law Revision Commission does not believe these provisions were intended
26 to apply to a public work. They would not seem to have a major effect on a public
27 work in any event, since completion is deemed to have occurred on a work
28 stoppage of 30 days on most public works.¹³⁶

29 Nonetheless, a public work stop payment notice must be served within 30 days
30 after the recording of a notice of cessation.¹³⁷ It is not clear why a public entity
31 would record a notice of cessation, since such a notice can only be recorded on or

133. Bronstein, *Trivial(?) Imperfections: The California Mechanics' Lien Recording Statutes*, 27 Loy. L.A. L. Rev. 735, 763 (1994).

134. The existing statutory reference to the Government Code is obsolete. The State Contract Act has been relocated, along with other statutes affecting public works contracts, to the Public Contract Code. See Pub. Cont. Code § 10100 *et seq.*

135. Civ. Code § 3086(c). See also Civ. Code § 3092 (“notice of cessation” defined).

136. Civ. Code § 3086 (unnumbered paragraph, 2d clause).

137. Civ. Code § 3184(a).

1 after 30 days of work stoppage, and by operation of law completion is deemed to
2 have occurred on the 30th day.

3 If the public entity records a notice of cessation on the 45th day of work
4 stoppage, do the statutes of limitation begin to run at that time, or do they continue
5 to run from the 30th day? The cases have not answered this question.

6 The Commission has no information about the frequency of recordation of a
7 notice of cessation by a public entity. It is likely that the ability to record a notice
8 of cessation causes more problems than it solves. It is perhaps a useful tool for a
9 contract awarded under the State Contract Act, to which the 30 day work stoppage
10 rule does not apply.

11 The proposed law makes no change on this point. **But the Law Revision
12 Commission solicits comment, particularly from state agencies, concerning
13 the utility of this provision.**

14 *Notice of Completion*

15 The statutes allow a public entity to record a notice of completion.¹³⁸ This has
16 the effect of reducing the time within which a claimant may give stop payment
17 notice from 90 days after completion to 30 days after recordation.

18 Recordation of a notice of completion also triggers the 10 day period during
19 which the public entity must notify a stop payment notice claimant of the time for
20 enforcing the claim.¹³⁹

21 Finally, recordation of a notice of completion reduces the time for a claimant on
22 a payment bond to notify the principal and surety on the bond from 75 days after
23 completion to 15 days after recordation.¹⁴⁰

24 The notice of completion thus serves a useful purpose in the public work context
25 and the proposed law retains it.

26 *Notice of Acceptance*

27 Civil Code Section 3184 remarks parenthetically that a notice of completion is
28 “sometimes referred to in public works as a notice of acceptance”. That is the only
29 place the term “notice of acceptance” is used in the mechanics lien law. The term
30 is not used at all in the Public Contract Code.

31 The statute gives the notice of acceptance no legal effect, although a claimant
32 notified by a public entity of its acceptance of the work of improvement would
33 undoubtedly be entitled to rely on the notice under common law principles.

34 The Law Revision Commission questions whether a notice of completion and a
35 notice of acceptance are indeed synonymous. A public works contract may be

138. Civ. Code § 3184.

139. Civ. Code § 3185. It is not clear how the timing on this duty works, however, since it is possible that the public entity will not receive a claimant’s stop payment notice until 30 days after recordation of the notice of completion.

140. Civ. Code § 3252(b).

1 substantially complete and the public entity may start a limitation period running
2 by recording a notice of completion. But that does not require the public entity to
3 have accepted the work of improvement. Further work may be necessary before
4 the public entity accepts the work of improvement.

5 The proposed law eliminates the “notice of acceptance” from the statute.¹⁴¹

6 PRELIMINARY NOTICE

7 A claimant on a public works contract must give a preliminary notice to the
8 public entity and the direct contractor as a prerequisite to exercise of stop payment
9 notice and payment bond remedies.¹⁴²

10 **Contents of Preliminary Notice**

11 The public work preliminary notice is similar to the private work preliminary
12 notice. Each requires the claimant to inform the person being notified of (1) the
13 work provided by the claimant and (2) the person that contracted with the claimant
14 for the work.

15 The private work preliminary notice also requires the claimant’s address and a
16 description of the construction site sufficient for identification. This information
17 would be useful information for a public work as well.

18 The proposed law conforms the content of the public work preliminary notice
19 for consistency with the private work preliminary notice. This conforms to
20 existing practice to use the same form for both types of projects.

21 **Disciplinary Action for Failure to Give Preliminary Notice**

22 Under existing law, if the amount to be paid a licensed subcontractor exceeds
23 \$400 and the subcontractor fails to give preliminary notice, the subcontractor is
24 subject to disciplinary licensing action.¹⁴³

25 This provision is antiquated. The \$400 figure was set in 1968. Adjusted for
26 inflation, it would be about \$2,000 today.

27 In many small jobs, giving a preliminary notice is not practical. The
28 subcontractor may elect not to incur the administrative effort and expense of
29 giving preliminary notice.

30 The proposed law does not continue the disciplinary sanction. Instead, it enables
31 disciplinary action if the subcontractor’s failure to protect its construction
32 remedies results in a loss to laborers. **The Law Revision Commission requests**
33 **comment on this change.**

141. The proposed law also eliminates the term “acceptance of completion,” which likewise is used only in one provision. See Civ. Code § 3184. That term is evidently a longhand for “acceptance”.

142. See, e.g., Civ. Code § 3098 (“preliminary 20-day notice (public work)” defined).

143. Civ. Code § 3098.

1 **Transitional Provision**

2 Existing law contains a transitional provision from an era when, for a year,
3 preliminary notice was required to be given to a subcontractor.¹⁴⁴ The transitional
4 rule is no longer necessary. In the interest of simplification, the proposed law
5 eliminates it.

6 **STOP PAYMENT NOTICE**

7 **Terminology**

8 The proposed law redesignates the public work stop notice as a “stop payment
9 notice” consistent with proposed usage in the private work portion of the
10 mechanics lien law. This terminological change is intended to improve clarity.

11 **Notification of Stop Payment Claimant**

12 Existing law provides that within 10 days after completion of a public works
13 contract, the public entity must notify each person that has given a stop payment
14 notice of the expiration of “such period.”¹⁴⁵ This cryptic provision probably is
15 intended to refer to the period for enforcement of payment of the claim stated in a
16 stop payment notice.¹⁴⁶ The proposed law clarifies the matter by codifying this
17 interpretation.

18 The notification statute also provides that “No such notice need be given unless
19 the claimant shall have paid to the public entity the sum of two dollars (\$2) at the
20 time of filing his stop notice.” The \$2 fee was enacted in 1969. It would amount to
21 about \$10 in today’s buying power. The proposed law increases the fee to \$10.

22 **Summary Release Procedure**

23 The direct contractor may obtain release of funds withheld pursuant to an
24 improper stop payment notice by a summary proceeding under existing law. The
25 matter is determined by the court sitting without a jury, based on affidavits of the
26 parties.

27 The summary procedure statute notes that “Nothing in this article shall be
28 construed to deprive any party of the right to a trial by jury in any case where such
29 right is given by the California Constitution, but a jury trial may be waived in like
30 manner as in the trial of an action.”¹⁴⁷

144. Civ. Code § 3098(e).

145. Civ. Code § 3185.

146. *J.H. Thompson Corp. v. DC Contractors*, 4 Cal. App. 4th 1355, 7 Cal. Rptr. 2d 1355 (1992), assumes “such period” refers to the period for enforcement of a stop payment notice, as do various treatises on mechanics lien law.

147. Civ. Code § 3204.

1 The California Constitution states that “Trial by jury is an inviolate right and
2 shall be secured to all.”¹⁴⁸ It is generally accepted that this provision codifies the
3 right to jury trial as it existed at common law in 1850, when the Constitution was
4 adopted.

5 Because the mechanics lien law remedies generally, and the summary release
6 procedure for a stop payment claim specifically, were unknown to the common
7 law and are equitable in nature, there would ordinarily be no constitutional right to
8 a jury trial.¹⁴⁹ The summary release procedure for funds withheld pursuant to a
9 stop payment notice does not implicate the loss of any rights for which a jury trial
10 would be required. The jury trial provision serves no useful purpose; the proposed
11 law eliminates it.

12 **Amount Due for Extras**

13 “No assignment by the original contractor of any money due or to become due to
14 the original contractor under the contract, or for ‘extras’ in connection therewith
15 whether made before or after the service of a stop notice, takes priority over a stop
16 notice.”¹⁵⁰ Although the grammatical construction of this provision is confusing,
17 the provision apparently intends that a stop payment notice has priority over an
18 assignment of an amount due for extras.

19 The meaning of “extras” in this context is unclear. The statutory waiver and
20 release forms refer in two places to extras furnished before or after the release date
21 and in one place to a disputed claim for extra work. Otherwise, the mechanics lien
22 law does not use the term.

23 The proposed law standardizes terminology by referring to “contract change”. A
24 stop payment notice would take priority over an assignment by the direct
25 contractor of any amount due or to become due under the contract, “including
26 contract changes”.

27 PAYMENT BOND

28 The payment bond requirements for a public works contract are confusing, both
29 in their application and in their coverage. The Law Revision Commission has
30 investigated what is being done in practice with respect to public work payment
31 bonds, and has come to the following conclusions.

148. Cal. Const. art. I, § 16.

149. However, if the defendant in a mechanics lien enforcement proceeding raises a contract defense, that may entail legal issues for which there is a right to jury trial. See, e.g., *Selby Constructors v. McCarthy*, 91 Cal. App. 3d 517, 154 Cal. Rptr. 164 (1979).

150. Civ. Code § 3193.

1 **Existing Practice**

2 Public Contract Code Section 7103(d) requires a payment bond in every
3 construction contract over \$5,000 awarded by a “state entity”:

4 For purposes of this section, “state entity” means every state office department
5 [sic], division, bureau, board, or commission, but does not include the Legislature,
6 the courts, any agency in the judicial branch of government, or the University of
7 California. All other public entities shall be governed by the provisions of Section
8 3247 of the Civil Code.

9 Civil Code Section 3247 requires a payment bond in every contract over \$25,000
10 awarded by a public entity, “except as provided in subdivision (d) of Section 7103
11 of the Public Contract Code”.

12 The circularity of this provision leaves doubt as to the rule applicable to the
13 Legislature, the judiciary, and the University of California. Are those entities
14 exempt from any payment bond requirement, or are they subject to a \$25,000
15 threshold? The law is unclear.

16 The judicial branch, for example, understands the intent of the existing statutory
17 scheme to be that it is exempt from any payment bond requirement. The judicial
18 branch indicates that, in any event, separation of powers doctrine would immunize
19 it from a statutory payment bond requirement. The judicial branch voluntarily
20 requires a payment bond in a contract over \$25,000. This has not been a
21 significant issue in the past because most court facilities were county owned. The
22 judicial branch will be more heavily involved with construction contract matters in
23 the future, now that the state has taken control of the trial courts.

24 The University of California also believes it is constitutionally exempt from any
25 statutory payment bond requirement.¹⁵¹ Nonetheless, the university voluntarily
26 adheres to the rule of Section 7103 and requires a payment bond in a contract over
27 \$5,000.

28 **State Contract Act**

29 To complicate matters, there are additional payment bond requirements
30 applicable to a public works contract under the State Contract Act.¹⁵² Subject to a
31 number of exceptions, that act applies to a state project for which the total cost
32 exceeds \$100,000, as adjusted to reflect changes in the annual California
33 Construction Index.¹⁵³

34 The State Contract Act requires that every contract covered by it include a
35 payment bond executed by an admitted surety insurer.¹⁵⁴ Subject to exceptions, the
36

151. See Cal. Const. art. IX, § 9.

152. Pub. Cont. Code §§ 10100-10285.1.

153. Pub. Cont. Code § 10105.

154. Pub. Cont. Code § 10221.

1 bond must be at least one-half the contract price.¹⁵⁵

2 A key exception to the one-half contract price requirement is “as otherwise
3 provided in Section 3248 of the Civil Code.”¹⁵⁶ At the time the exception was
4 written, Civil Code Section 3248 provided a sliding scale for the amount of the
5 payment bond required for a public work, based on the contract price. That
6 scheme was changed beginning in 1998 and 2000, so that now Section 3248
7 requires that, “The bond shall be in a sum not less than one hundred percent of the
8 total amount payable by the terms of the contract.”¹⁵⁷

9 Another problem is that the exact scope of the State Contract Act is not defined.
10 A bond under that act is subject to approval of the “department”,¹⁵⁸ which is
11 defined to mean the Department of Water Resources, General Services, Boating
12 and Waterways, or Corrections, with respect to a project within its jurisdiction, or
13 the Department of Transportation with respect to all other projects.¹⁵⁹ This may
14 suggest a limited scope. There is no case law on the matter.

15 **Preserve Status Quo**

16 Reading all these statutes together and interpreting legislative intent as rationally
17 as possible, the Law Revision Commission concludes:

- 18 • A public entity other than the state must require a 100% payment bond in a
19 construction project over \$25,000.
- 20 • The state, other than the Legislature, the judiciary, or the University of
21 California, must require a 100% payment bond in a construction project
22 over \$5,000.
- 23 • It is unclear what, if any, requirements apply to the Legislature, the
24 judiciary, and the University of California. There are constitutional
25 considerations affecting these entities, and their practices with respect to
26 requiring a payment bond in their construction contracts vary.
- 27 • Special rules may apply to specific types of state projects that are the subject
28 of an express statute. For example, the Department of Transportation may
29 specify a smaller than 100% payment bond in a project over \$250,000,000,
30 subject to limitations.

31 The proposed law does not attempt to provide uniform rules applicable to all
32 public works contracts, state and local. The public cost implications are
33 significant. The proposed law preserves the status quo.

155. Pub. Cont. Code § 10222.

156. Pub. Cont. Code § 10222.

157. Civ. Code § 3248(a).

158. Pub. Cont. Code § 10221.

159. Pub. Cont. Code § 10106.

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Pub. Cont. Code § 21131 (amended). Sonoma County Flood Control and Water Conservation District	232
Pub. Cont. Code § 21141 (amended). Mendocino County Flood Control and Water Conservation District	233
Pub. Cont. Code § 21151 (amended). Alameda County Flood Control and Water Conservation District	234
Pub. Cont. Code § 21161 (amended). Santa Clara Valley Water District.....	235
Pub. Cont. Code § 21171 (amended). Napa County Flood Control and Water Conservation District.....	236
Pub. Cont. Code § 21181 (amended). Lake County Flood Control and Water Conservation District.....	237
Pub. Cont. Code § 21196 (amended). Solano County Water Agency.....	237
Pub. Cont. Code § 21212 (amended). Sacramento County Water Agency.....	238
Pub. Cont. Code § 21231 (amended). Marin County Flood Control and Water Conservation District.....	239
Pub. Cont. Code § 21241 (amended). Contra Costa County.....	240
Pub. Cont. Code § 21251 (amended). San Benito County Water Conservation and Flood Control District.....	241
Pub. Cont. Code § 21261 (amended). Del Norte County Flood Control District.....	241
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Pub. Cont. Code § 21311 (amended). San Joaquin County Flood Control and Water Conservation District	244
Pub. Cont. Code § 21321 (amended). Placer County Water Agency	245
Pub. Cont. Code § 21331 (amended). Tehama County Flood Control and Water Conservation District	246
Pub. Cont. Code § 21341 (amended). Shasta County Water Agency	247
Pub. Cont. Code § 21351 (amended). Yuba County Water Agency	247
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Pub. Cont. Code § 21391 (amended). Plumas County Flood Control and Water Conservation District	250
Pub. Cont. Code § 21401 (amended). Siskiyou County Flood Control and Water Conservation District	251
Pub. Cont. Code § 21411 (amended). Nevada County Water Agency	252
Pub. Cont. Code § 21421 (amended). Sierra County Flood Control and Water Conservation District.....	252
Pub. Cont. Code § 21431 (amended). Lassen-Modoc County Flood Control and Water Conservation District	253
Pub. Cont. Code § 21441 (amended). Yuba-Bear River Basins Authority.....	254
Pub. Cont. Code § 21451 (amended). Amador County Water Agency	255
Pub. Cont. Code § 21461 (amended). El Dorado County Water Agency	255
Pub. Cont. Code § 21491 (amended). Kern County Water Agency	256
Pub. Cont. Code § 21501 (amended). Desert Water Agency.....	257
Pub. Cont. Code § 21511 (amended). San Geronio Pass Water Agency.....	258
Pub. Cont. Code § 21521 (amended). Alpine County Water Agency	259

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Pub. Cont. Code § 21541 (amended). Crestline-Lake Arrowhead Water Agency	260
Pub. Cont. Code § 21572 (amended). Madera County Flood Control and Water Conservation Agency	261
Pub. Cont. Code § 21581 (amended). Tulare County Flood Control District	262
Pub. Cont. Code § 21591 (amended). Bighorn Mountains Water Agency	263
Pub. Cont. Code § 21601 (amended). Tuolumne County Water Agency	264
Pub. Cont. Code § 21622 (amended). Monterey Peninsula Water Management District.....	264
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PROPOSED LEGISLATION

CONSTRUCTION REMEDIES

1

2 **Cal. Const. Art 14, § 3 (unchanged). Lien on property for labor and material**

3 SEC. 3. Mechanics, persons furnishing materials, artisans, and laborers of every
4 class, shall have a lien upon the property upon which they have bestowed labor or
5 furnished material for the value of such labor done and material furnished; and the
6 Legislature shall provide, by law, for the speedy and efficient enforcement of such
7 liens.

8 **Civ. Code §§ 3081.1-3081.10 (repealed). Design professionals lien**

9 SEC. _____. Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of
10 Division 3 of the Civil Code is repealed.

11 **Comment.** Former Chapter 8 (former Sections 3081.1-3081.10) is replaced by Chapter 3
12 (Sections 7300-7316) of Part 6 of Division 4. For the disposition of the provisions of former
13 Chapter 8, see [Table in Note]. The source of each section in the new law is indicated in its
14 Comment.

15 **Note.** This table shows the disposition of Chapter 8 (commencing with Section 3081.1) of
16 Title 14 of the Civil Code. All dispositions are to the Civil Code. For further detail, see the
17 Comment to the appropriate section in this draft *infra*.

Existing Provision	New Provision
3081.1.....	7010
3081.2.....	7300
3081.3.....	7302
3081.4.....	7304
3081.5.....	7306
3081.6.....	7308
3081.7.....	7310
3081.8.....	7312
3081.9.....	7314
3081.10.....	7316

18 **Civ. Code §§ 3082-3267 (repealed). Works of improvement**

19 SEC. _____. Title 15 (commencing with Section 3082) of Part 4 of Division 3 of
20 the Civil Code is repealed.

21 **Comment.** Former Title 15 (former Sections 3082-3267) is replaced by new Part 6 (Sections
22 7000-7848) of Division 4 of the Civil Code (private work of improvement) and by new Part 6
23 (Sections 41010-45090) of Division 2 of the Public Contract Code (public works contract
24 remedies). For the disposition of the provisions of former Title 15, see [Table in Note]. The
25 source of each section in the new law is indicated in its Comment.

26 **Note.** This table shows the disposition of Title 15 (commencing with Section 3082) of Part
27 4 of Division 3 of the Civil Code. Unless otherwise indicated, all dispositions are to the Civil
28 Code. For further detail, see the Comment to the appropriate section in this draft *infra*.

Existing Provision	New Provision	Existing Provision	New Provision
3082.....	7000, Pub. Cont. Code § 41010	3114.....	7410
3083.....	7042(b), 7506, 7532	3115.....	7412
3084.....	7418	3116.....	7414
3085.....	7002, Pub. Cont. Code § 41020	3117.....	7154
3086.....	7150, Pub. Cont. Code § 42210	3118.....	7424
3087.....	7004	3123.....	7008, 7430
3088.....	7006	3124.....	7432
3089(a).....	7018	3128.....	7440, 7442
3089(b).....	7020, 7070, Pub. Cont. Code § 41080	3129.....	7442
3090.....	7026	3130.....	7446
3092.....	7152, Pub. Cont. Code § 42220	3131.....	7416, 7448
3093.....	7152, Pub. Cont. Code § 42220	3134.....	7450
3094.....	7444	3135.....	7454
3095.....	7012, Pub. Cont. Code § 41040	3136.....	7456
3096.....	7030, 7606, Pub. Cont. Code §§ 41090, 45030	3137.....	7458(a)
3097.....	7034, 7200, 7202, 7204	3138.....	7452
3097(d).....	7206	3139.....	7458(b)
3097(e).....	7214	3140.....	7434
3097(g).....	7208	3143.....	7428
3097(h).....	7216	3144.....	7460
3097(k).....	7072	3144.5.....	7428(d)
3097(i).....	7132	3145.....	7460
3097(j).....	7134	3146.....	7464
3097(l)-(m).....	7130, 7210	3147.....	7466
3097(n).....	7212	3148.....	7492
3097(o).....	7218	3149.....	not continued
3098.....	Pub. Cont. Code §§ 41110, 43010 through 43060	3150.....	7470
3098(a).....	Pub. Cont. Code § 42070	3151.....	7472
3098(b).....	Pub. Cont. Code § 43060	3152.....	7474
3099.....	7036, Pub. Cont. Code § 41120(a)	3153.....	7476
3100.....	Pub. Cont. Code §§ 41130, 42010(a)	3154.....	7488
3101.....	7038, Pub. Cont. Code § 41140	3154(a).....	7480(a)(1)
3102.....	7040	3154(b).....	7484
3103.....	7502, 7506, Pub. Cont. Code §§ 41150, 42090, 44120, 44130(a)	3154(c).....	7486
3104.....	7044	3154(d).....	7486
3105.....	not continued	3154(e).....	7486
3106.....	7046	3154(f).....	7490
3109.....	not continued	3156.....	not continued
3110.....	7400, 7406, 7430	3158.....	7520
3110.5(a).....	7710	3159.....	7530(a)
3110.5(a)(1).....	7700(b)	3159(a).....	7536, 7538
3110.5(a)(2).....	7700(a)	3159(b).....	7542
3110.5(b).....	7710, 7720	3159(c).....	7542
3110.5(b)(1).....	7722	3160.....	7508
3110.5(b)(2).....	7724	3161.....	7522
3110.5(b)(3).....	7726, 7728	3162(a).....	7536, 7538
3110.5(c).....	7712, 7730	3162(b).....	7542
3110.5(d).....	7716	3162(c).....	7542
3110.5(e).....	7702	3163.....	7534
3110.5(f).....	7704	3166.....	7544
3110.5(g).....	7714	3167.....	7540
3111.....	7014, 7402, Pub. Cont. Code § 41050	3168.....	7504
3112.....	7404, 7406	3171.....	7510
		3172.....	7550
		3173.....	7554
		3174.....	7556

Existing Provision	New Provision	Existing Provision	New Provision
3175.....	7552	3260(i).....	7822
3176.....	7558	3260.1.....	7800
3176.5.....	7560	3260.2(a).....	7830, 7832, 7834, 7836, 7840
3179.....	Pub. Cont. Code § 42010(a)	3260.2(b).....	7842
3181.....	Pub. Cont. Code § 42030	3260.2(c).....	7838
3183.....	Pub. Cont. Code § 44410(a)	3260.2(d).....	7844
3184.....	Pub. Cont. Code § 44140	3260.2(e).....	7846
3185.....	Pub. Cont. Code § 44170	3260.2(f).....	7848
3186.....	Pub. Cont. Code § 44150	3261.....	7424
3187.....	Pub. Cont. Code § 44160	3262(a).....	7160, 7162, Pub. Cont. Code §§ 42310, 42320
3190.....	Pub. Cont. Code § 44310	3262(b).....	7164, 7166, Pub. Cont. Code §§ 42330, 42340
3191.....	Pub. Cont. Code § 44320	3262(c).....	7168, Pub. Cont. Code § 42350
3192.....	Pub. Cont. Code § 44330	3262(d)(1).....	7170, Pub. Cont. Code § 42360
3193.....	Pub. Cont. Code § 44340	3262(d)(2).....	7172, Pub. Cont. Code § 42370
3196.....	Pub. Cont. Code § 44180	3262(d)(3).....	7174, Pub. Cont. Code § 42380
3197.....	Pub. Cont. Code § 44210	3262(d)(4).....	7176, Pub. Cont. Code § 42390
3198.....	Pub. Cont. Code § 44220	3262.5.....	7802
3199.....	Pub. Cont. Code § 44230	3263.....	7057
3200.....	Pub. Cont. Code § 44240	3264.....	7500, Pub. Cont. Code § 44110
3201.....	Pub. Cont. Code § 44250	3265.....	Pub. Cont. Code § 44410(b)
3202.....	Pub. Cont. Code § 44260	3266(a).....	7062(a)
3203.....	Pub. Cont. Code § 44270	3266(b).....	Pub. Cont. Code § 42010
3204.....	not continued	3267.....	7608, 45090
3205.....	Pub. Cont. Code § 44280		
3210.....	Pub. Cont. Code § 44420		
3211.....	Pub. Cont. Code § 44430		
3212.....	Pub. Cont. Code § 44450		
3213.....	Pub. Cont. Code § 44460		
3214.....	Pub. Cont. Code § 44440		
3225.....	7142, Pub. Cont. Code § 42100		
3226.....	7144, Pub. Cont. Code § 45040		
3227.....	Pub. Cont. Code § 45070(b)-(d)		
3235.....	7602(a), 7602(b)		
3236.....	7600, 7602(a)		
3237.....	7022, 7604		
3239.....	7610		
3240.....	7610		
3242.....	7612		
3247.....	Pub. Cont. Code § 45010		
3248.....	Pub. Cont. Code § 45030		
3249.....	Pub. Cont. Code § 45050		
3250.....	Pub. Cont. Code § 45080		
3251.....	Pub. Cont. Code § 45020		
3252.....	Pub. Cont. Code § 45070(a)		
3252(a).....	Pub. Cont. Code § 45060		
3258.....	7056(c), 7056(d)		
3259.....	7054, Pub. Cont. Code § 42050		
3259.5.....	7156		
3260(a).....	not continued		
3260(b).....	7810		
3260(c).....	7812		
3260(d).....	7814		
3260(e).....	7814		
3260(f).....	7816		
3260(g).....	7818		
3260(h).....	7820		

1 **Civ. Code §§ 7100-7106 (repealed). Automatic checkout system**
2 SEC. _____. Part 8 (commencing with Section 7100) of Division 4 of the Civil
3 Code is repealed.

4 **Comment.** Former Part 8 (former Sections 7100-7106) is relocated to new Title 1.4C (Sections
5 1749.70-1749.76) of Part 4 of Division 3. The purpose of the relocation is to make space for new
6 Part 6 (Sections 7000-7848), relating to private works of improvement.

7 For the disposition of the provisions of former Part 8, see [Table in Note]. The source of each
8 section in the new law is indicated in its Comment.

9 **Note.** This table shows the disposition of Part 8 (commencing with Section 7100) of
10 Division 4 of the Civil Code. All dispositions are to the Civil Code. For further detail, see the
11 Comment to the appropriate section in this draft *infra*.

Existing Provision	New Provision
7100.....	1749.70
7101.....	1749.71
7102.....	1749.72
7103.....	1749.73
7104.....	1749.74
7105.....	1749.75
7106.....	1749.76

12 **PRIVATE WORK OF IMPROVEMENT**

13 **Civ. Code §§ 7000-7848 (added). Private work of improvement**
14 SEC. _____. Part 6 (commencing with Section 7000) is added to Division 4 of the
15 Civil Code, to read:

16 **PART 6. PRIVATE WORK OF IMPROVEMENT**

17 **CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS**

18 **Article 1. Definitions**

19 **§ 7000. Application of definitions**

20 7000. Unless the provision or context otherwise requires, the definitions in this
21 article govern the construction of this part.

22 **Comment.** Section 7000 continues former Section 3082 without substantive change.

23 **§ 7002. Claimant**

24 7002. “Claimant” means a person that has or exercises a right under this part to
25 record a claim of lien, file a stop payment notice, or assert a claim against a
26 payment bond.

27 **Comment.** Section 7002 restates former Section 3085, omitting reference to the combination
28 of remedies as unnecessary.

1 See also Sections 7024 (“lien” defined), 7030 (“payment bond” defined), 7032 (“person”
2 defined), 7042 (“stop payment notice” defined).

3 **§ 7003. Commencement**

4 7003. A work of improvement “commences” when either of the following
5 occurs:

6 (a) Material or supplies that are used, consumed, or incorporated in the work of
7 improvement are delivered to the site.

8 (b) There is actual visible work of a permanent nature on the site.

9 **Comment.** Section 7003 is new. It codifies case law. See, e.g., *Walker v. Lytton Sav. & Loan*
10 *Ass’n*, 2 Cal. 3d 152, 159, 84 Cal. Rptr. 521 (1970); *Halbert’s Lumber, Inc. v. Lucky Stores, Inc.*,
11 6 Cal. App. 4th 1233, 1240-1241, 8 Cal. Rptr. 2d 298 (1992).

12 **§ 7004. Construction lender**

13 7004. “Construction lender” means either of the following:

14 (a) A mortgagee or beneficiary under a deed of trust lending funds for payment
15 of construction costs for all or part of a work of improvement, or the assignee or
16 successor in interest of the mortgagee or beneficiary.

17 (b) An escrow holder or other person holding funds provided by an owner,
18 lender, or another person as a fund for payment of construction costs for all or part
19 of a work of improvement.

20 **Comment.** Section 7004 continues former Section 3087 without substantive change.

21 See also Sections 14 (present includes future), 7028 (“owner” defined), 7032 (“person”
22 defined), 7046 (“work of improvement” defined).

23 **§ 7006. Contract**

24 7006. “Contract” means an agreement between an owner and a direct contractor
25 that provides for all or part of a work of improvement. The term includes a
26 contract change.

27 **Comment.** Section 7006 continues former Section 3088 and adds a reference to a contract
28 change. The term “contract change” replaces “written modification of the contract” as used in
29 former Section 3123. This codifies the effect of *Basic Modular Facilities, Inc. v. Ehsanipour*, 70
30 Cal. App. 4th 1480, 83 Cal. Rptr. 2d 462 (1990).

31 There are instances in this part where the term is not used in its defined sense. See, e.g.,
32 Sections 7028 (contract of purchase), 7130 (subcontract). See also Section 7000 (application of
33 definitions).

34 See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined), 7046 (“work of
35 improvement” defined).

36 **§ 7008. Contract price**

37 7008. “Contract price” means the price agreed to for a work of improvement,
38 including a contract change. If the parties have not agreed to a price for the work
39 of improvement, the contract price is the reasonable value of the labor, service,
40 equipment, or material provided for the work of improvement.

41 **Comment.** Section 7008 generalizes provisions found in former Section 3123 (amount of lien)
42 and throughout the mechanics lien law.

1 See also Sections 7006 (“contract” defined), 7016 (“labor, service, equipment, or material”
2 defined).

3 **§ 7010. Design professional**

4 7010. “Design professional” means a certificated architect, registered
5 professional engineer, or licensed land surveyor that provides services pursuant to
6 a written contract with an owner for the design, engineering, or planning of a work
7 of improvement.

8 **Comment.** Section 7010 restates the first paragraph of former Section 3081.1. The
9 introductory clause and the second paragraph of former Section 3081.1 are not continued because
10 they are surplus. See Section 7000 (application of definitions).

11 See also Sections 7006 (“contract” defined), 7046 (“work of improvement” defined).

12 **§ 7012. Direct contractor**

13 7012. “Direct contractor” means a person that has a direct contractual
14 relationship with an owner.

15 **Comment.** Section 7012 supersedes former Section 3095 “original contractor”. A direct
16 contractor is not limited to a builder, and may include a surveyor, engineer, material supplier,
17 artisan, or other person that contracts directly with the owner. A direct contractor within the
18 meaning of this section is one that contracts directly with the owner and is not one such as a
19 subcontractor or material provider that contracts with a general contractor acting as the owner’s
20 “agent” for purposes of authorizing work.

21 See also Sections 7028 (“owner” defined), 7032 (“person” defined).

22 **§ 7014. Express trust fund**

23 7014. “Express trust fund” means a laborers compensation fund to which a
24 portion of a laborer’s total compensation is to be paid pursuant to an employment
25 agreement or a collective bargaining agreement for the provision of benefits,
26 including, but not limited to, employer payments described in Section 1773.1 of
27 the Labor Code and implementing regulations.

28 **Comment.** Section 7014 continues a portion of former Section 3111 without substantive
29 change.

30 See also Sections 7018 (“laborer” defined), 7020 (“laborers compensation fund” defined).

31 **§ 7015. Know or knowledge**

32 7015. A person “knows” or “has knowledge” of information if the person knows
33 or should have known that information.

34 **Comment.** Section 7015 is new.

35 See also Section 7032 (“person” defined).

36 **§ 7016. Labor, service, equipment, or material**

37 7016. “Labor, service, equipment, or material” includes but is not limited to
38 labor, skills, services, material, supplies, equipment, appliances, transportation,
39 power, surveying, construction plans, and construction management provided for a
40 work of improvement.

1 **Comment.** Section 7016 is a new definition. It is included for drafting convenience. The
2 phrase is intended to encompass all things of value provided for a work of improvement, and
3 replaces various phrases used throughout the former law, including “labor or material,” “labor,
4 services, equipment, or materials,” “appliances, teams, or power,” and the like. The definition
5 applies to variant grammatical forms of the phrase used in this part, such as “labor, service,
6 equipment, *and* material.”

7 See also Section 7046 (“work of improvement” defined).

8 **§ 7018. Laborer**

9 7018. “Laborer” means a person who, acting as an employee, performs labor on,
10 or bestows skill or other necessary services on, a work of improvement.

11 **Comment.** Section 7018 continues former Section 3089(a) without substantive change.
12 “Laborer” is no longer defined to include a compensation fund, which is treated separately in this
13 part. Cf. Section 7020 (“laborers compensation fund” defined).

14 See also Section 7046 (“work of improvement” defined).

15 **§ 7020. Laborers compensation fund**

16 7020. “Laborers compensation fund” means a person, including an express trust
17 fund, to which a portion of the compensation of a laborer is paid by agreement
18 with the laborer or the collective bargaining agent of the laborer.

19 **Comment.** Section 7020 continues the first sentence of former Section 3089(b) without
20 substantive change. See also Section 7070 (standing to enforce laborer’s rights).

21 See also Sections 7014 (“express trust fund” defined), 7018 (“laborer” defined), 7032
22 (“person” defined).

23 **§ 7022. Lending institution**

24 7022. “Lending institution” includes commercial bank, savings and loan
25 institution, credit union, or other organization or person engaged in the business of
26 financing loans.

27 **Comment.** Section 7022 continues the second paragraph of former Section 3237.

28 See also Section 7032 (“person” defined).

29 **§ 7024. Lien**

30 7024. “Lien” means a lien under this part and includes a lien of a design
31 professional under Section 7300, a lien for a work of improvement under Section
32 7400, and a lien for a site improvement under Section 7404.

33 **Comment.** Section 7024 is a new definition. It is included for drafting convenience. There are
34 instances in this part where the term is not used in its defined sense. See, e.g., Sections 7446 (d)
35 (multiple works of improvement), 7450 (a) (priority of lien). See also Section 7000 (application
36 of definitions).

37 See also Sections 7010 (“design professional” defined), 7040 (“site improvement” defined),
38 7046 (“work of improvement” defined).

39 **§ 7026. Material supplier**

40 7026. (a) “Material supplier” means a person that provides material or supplies
41 to be used or consumed in a work of improvement.

1 (b) Materials or supplies delivered to a site are presumed to have been used or
2 consumed in the work of improvement. The presumption established by this
3 subdivision is a presumption affecting the burden of proof.

4 **Comment.** Subdivision (a) of Section 7026 replaces the term “materialman” with the term
5 “material supplier” to conform to contemporary usage under this part. It continues former Section
6 7026 without substantive change.

7 Subdivision (b) is new. It reverses existing law. See, e.g., Consolidated Elec. Distributors, Inc.
8 v. Kirkham, Chaon & Kirkham, Inc., 18 Cal. App. 3d 54, 58, 95 Cal. Rptr. 673 (1971).

9 See also Sections 7032 (“person” defined), 7046 (“work of improvement” defined).

10 **Note.** Addition of subdivision (b), creating a presumption in favor of a material supplier, is
11 contingent on development of a balanced package that provides offsetting benefits to other
12 persons affected.

13 § 7028. Owner

14 7028. “Owner” means:

15 (a) With respect to a work of improvement, a person that contracts for the work
16 of improvement.

17 (b) With respect to property on which a work of improvement is situated or
18 planned, a person that owns the fee or a lesser interest in the property, including
19 but not limited to an interest as lessee or as vendee under a contract of purchase.

20 (c) A successor in interest of a person described in subdivision (a) or (b).

21 **Comment.** Section 7028 is a new definition. It is included for drafting convenience.

22 For the authority of an owner to act on behalf of co-owners, and for the effect of notice to a co-
23 owner or the owner of a lesser interest, see Section 7058 (co-owners). For general provisions on
24 the authority of an agent, see Section 7060 (agency).

25 See also Sections 7032 (“person” defined), 7046 (“work of improvement” defined).

26 § 7030. Payment bond

27 7030. “Payment bond” means a bond given under Chapter 6 (commencing with
28 7600).

29 **Comment.** Section 7030 supersedes former Section 3096. See also Section 7600 (payment
30 bond). There are instances in this part where the term is not used in its defined sense. See, e.g.,
31 Sections 7720-7722 (payment bond as security for large project). See also Section 7000
32 (application of definitions).

33 § 7032. Person

34 7032. “Person” means an individual, corporation, public entity, business trust,
35 estate, trust, partnership, limited liability company, association, or other entity.

36 **Comment.** Section 7032 is a new definition. It is included for drafting convenience. It
37 supplements Section 14 (“person” includes corporation as well as natural person).

38 See also Section 7036 (“public entity” defined).

39 § 7034. Preliminary notice

40 7034. “Preliminary notice” means the notice provided for in Chapter 2
41 (commencing with 7200).

1 **Comment.** Section 7034 supersedes former Section 3097. The substantive requirements for
2 preliminary notice are relocated to Section 7200 *et seq.*

3 **§ 7036. Public entity**

4 7036. “Public entity” means the state, Regents of the University of California, a
5 county, city, district, public authority, public agency, and any other political
6 subdivision or public corporation in the state.

7 **Comment.** Section 7036 continues former Section 3099 without substantive change. This part
8 does not apply to a public work, including a work of improvement governed by federal law. See
9 Section 7050 (application of part). For public works contract remedies, see Pub. Cont. Code §§
10 41010-42390.

11 See also Section 14 (“county” includes city and county).

12 **§ 7037. Reputed owner, direct contractor, or construction lender**

13 7037. (a) “Reputed owner” means a person that a claimant reasonably and in
14 good faith believes is an owner.

15 (b) “Reputed direct contractor” means a person that a claimant reasonably and in
16 good faith believes is a direct contractor.

17 (c) “Reputed construction lender” means a person that a claimant reasonably and
18 in good faith believes is a construction lender.

19 **Comment.** Section 7037 is new. It codifies case law. See *Kodiak Industries, Inc. v. Ellis*, 185
20 Cal. App. 3d 75, 85, 229 Cal. Rptr. 418 (1986). A reference in this part to a reputed owner,
21 contractor, or lender, includes co-owners, contractors, or lenders. See Section 14 (the singular
22 includes the plural).

23 **§ 7038. Site**

24 7038. “Site” means the property on which a work of improvement is situated or
25 planned.

26 **Comment.** Section 7038 continues former Section 3101, with the addition of a reference to a
27 planned work of improvement. See Section 7300 (design professionals lien).

28 See also Section 7046 (“work of improvement” defined).

29 **§ 7040. Site improvement**

30 7040. “Site improvement” means any of the following work on property:

31 (a) Demolition or removal of improvements, trees, or other vegetation.

32 (b) Drilling test holes.

33 (c) Grading, filling, or otherwise improving the property or a street, highway, or
34 sidewalk in front of or adjoining the property.

35 (d) Construction or installation of sewers or other public utilities.

36 (e) Construction of areas, vaults, cellars, or rooms under sidewalks.

37 (f) Any other work or improvements in preparation of the site for a work of
38 improvement.

39 **Comment.** Section 7040 continues former Section 3102 without substantive change.
40 Subdivision (f) makes clear that the reference in former law to “making any improvements”
41 means preparatory work, including infrastructure, and does not include construction of a
42 structure.

1 See also Sections 7038 (“site” defined), 7046 (“work of improvement” defined).

2 **§ 7042. Stop payment notice**

3 7042. (a) “Stop payment notice” means the notice given under Chapter 5
4 (commencing with Section 7500). A reference in another statute to a “stop notice”
5 in connection with the remedies provided in this part means a stop payment notice.

6 (b) A stop payment notice may be bonded or unbonded. A “bonded stop
7 payment notice” is a notice given with a bond under Section 7532. An “unbonded
8 stop payment notice” is a notice not given with a bond under Section 7532.

9 (c) Except to the extent this part distinguishes between a bonded and an
10 unbonded stop payment notice, a reference in this part to a stop payment notice
11 includes both a bonded and an unbonded notice.

12 **Comment.** Subdivision (a) of Section 7042 is new. The term “stop payment notice” replaces
13 the term “stop notice” used in former law.

14 Subdivision (b) supersedes former Section 3083.

15 **§ 7044. Subcontractor**

16 7044. “Subcontractor” means a contractor that does not have a direct contractual
17 relationship with an owner. The term includes a contractor that has a contractual
18 relationship with a direct contractor or with another subcontractor.

19 **Comment.** The first sentence of Section 7044 continues former Section 3104 without
20 substantive change. The second sentence is new; it makes clear that the term “subcontractor”
21 includes a subcontractor below the first tier.

22 See also Section 7028 (“owner” defined).

23 **Note.** We have added the second sentence to this section to make clear that the term
24 “subcontractor” includes a subcontractor below the first tier.

25 **§ 7046. Work of improvement**

26 7046. (a) “Work of improvement” includes but is not limited to:

27 (1) Construction, alteration, repair, demolition, or removal, in whole or in part,
28 of, or addition to, a building, wharf, bridge, ditch, flume, aqueduct, well, tunnel,
29 fence, machinery, railroad, or road.

30 (2) Seeding, sodding, or planting of property for landscaping purposes.

31 (3) Filling, leveling, or grading of property.

32 (b) Except as otherwise provided in this part, “work of improvement” means the
33 entire structure or scheme of improvement as a whole, and includes site
34 improvement.

35 **Comment.** Section 7046 restates former Section 3106. The section is revised to reorganize and
36 tabulate the different types of works falling within the definition, to expand the coverage of the
37 definition, and to make various technical, nonsubstantive revisions. The term “property” replaces
38 “lot or tract of land.”

39 A site improvement is treated under this part in the same manner as a work of improvement
40 generally, except as specifically provided in this part. See Sections 7448 (claim against separate
41 residential units), 7450 (priority of lien), 7458 (priority of site improvement lien). See also
42 Section 7040 (“site improvement” defined).

1 Article 2. Miscellaneous Provisions

2 § 7050. Application of part

3 7050. This part applies only to a private work of improvement.

4 **Comment.** Section 7050 is new. It subsumes various provisions of former law, including
5 former Sections 3097 (preliminary notice of private work), 3109 (application of mechanics lien
6 provisions), 3156 (stop notice provisions), 3260 (retention payment provisions), 3260.1 (progress
7 payment provisions), 3260.2 (stop work notice provisions).

8 The provisions of the mechanics lien law governing a public work are relocated to the Public
9 Contract Code. See Pub. Cont. Code §§ 41010-42390 (public works contract remedies).

10 See also Section 7046 (“work of improvement” defined).

11 § 7052. Jurisdiction and venue

12 7052. The proper court for proceedings under this part is the superior court in
13 the county in which a work of improvement, or part of it, is situated.

14 **Comment.** Section 7052 is a new provision included for drafting convenience. It generalizes a
15 number of provisions of former law.

16 See also Section 7046 (“work of improvement” defined).

17 § 7054. Rules of practice

18 7054. Except as otherwise provided in this part, Part 2 (commencing with
19 Section 307) of the Code of Civil Procedure provides the rules of practice in
20 proceedings under this part.

21 **Comment.** Section 7054 continues the first sentence of former Section 3259 without
22 substantive change. The second sentence of former Section 3259 is not continued; this part does
23 not include special provisions relating to new trials or appeals.

24 Section 7054 makes former Section 3149, relating to consolidation of actions, unnecessary.
25 Part 2 of the Code of Civil Procedure enables persons claiming liens on the same property to join
26 in the same action to enforce their liens. See Code Civ. Proc. § 378 (permissive joinder). If
27 separate actions are commenced the court may consolidate them. See Code Civ. Proc. § 1048
28 (consolidation of actions).

29 § 7056. Filing and recording of papers

30 7056. (a) If this part provides for filing a contract, plan, or other paper with the
31 county recorder the provision is satisfied by filing the paper in the office of the
32 county recorder of the county in which the work of improvement or part of it is
33 situated.

34 (b) If this part provides for recording a notice, claim of lien, payment bond, or
35 other paper, the provision is satisfied by filing the paper for record in the office of
36 the county recorder of the county in which the work of improvement or part of it is
37 situated. A paper in otherwise proper form, verified and containing the
38 information required by this part, shall be accepted by the recorder for recording
39 and is deemed duly recorded without acknowledgment.

40 (c) The county recorder shall number, index, and preserve a contract, plan, or
41 other paper presented for filing under this part, and shall number, index, and
42 transcribe into the official records, in the same manner as a conveyance of real

1 property, a notice, claim of lien, payment bond, or other paper recorded under this
2 part.

3 (d) The county recorder shall charge and collect the fees provided in Article 5
4 (commencing with Section 27360) of Chapter 6 of Part 3 of Division 2 of Title 3
5 of the Government Code for performing duties under this section.

6 **Comment.** Subdivisions (a) and (b) of Section 7056 are new. They generalize a number of
7 provisions of former law. The provision of subdivision (b) for recordation without
8 acknowledgment is drawn from former Sections 3084 and 3093; it is an exception to the general
9 rule of Government Code Sections 27280 and 27287.

10 Subdivisions (c) and (d) continue former Section 3258 without substantive change.

11 See also Sections 7024 (“lien” defined), 7046 (“work of improvement” defined).

12 § 7057. Effect of act by owner

13 7057. No act of an owner in good faith and in compliance with a provision of
14 this part shall be construed to prevent a direct contractor’s performance of the
15 contract, or exonerate a surety on a performance or payment bond.

16 **Comment.** Section 7057 continues former Section 3263 without substantive change.

17 See also Section 7142 (release of surety from liability).

18 See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7028 (“owner”
19 defined).

20 § 7058. Co-owners

21 7058. (a) An owner may give a notice or execute or file a document under this
22 part on behalf of a co-owner if the owner acts on the co-owner’s behalf and
23 includes in the notice or document the name and address of the co-owner on
24 whose behalf the owner acts.

25 (b) Notice to an owner of a leasehold or other interest in property that is less
26 than a fee is not notice to an owner of the fee. Nothing in this subdivision limits
27 the effect of knowledge of an owner, or of notice to a reputed owner where that
28 notice is authorized by statute.

29 **Comment.** Section 7058 is new. It generalizes provisions found in former Sections 3092
30 (notice of cessation) and 3093 (notice of completion), and clarifies the effect of giving notice by a
31 co-owner.

32 Under subdivision (c), notice to the owner of a leasehold may be effective as to the owner of
33 the fee where the owner of the leasehold is the reputed owner of the fee and notice is given
34 pursuant to statutory authority to notify the reputed owner. See, e.g., Section 7202 (preliminary
35 notice requirement). This subdivision deals only with the effect of notice to the owner of a less
36 than fee interest. It does not deal with knowledge of the owner of the fee. See, e.g., Section 7442
37 (lien attaches to interest of person for work provided with knowledge of that person).

38 See also Sections 7028 (“owner” defined), 7046 (“work of improvement” defined).

39 § 7060. Agency

40 7060. An act that may be done by or to a person under this part may be done by
41 or to the person’s agent to the extent the act is within the scope of the agent’s
42 authority.

1 (1) The name and address of any express trust fund to which employer payments
2 are due.

3 (2) The total number of straight time and overtime hours on each job.

4 (3) The amount then past due and owing.

5 (b) Failure to give the notice required by subdivision (a) constitutes grounds for
6 disciplinary action under the Contractors' State License Law, Chapter 9
7 (commencing with Section 7000) of Division 3 of the Business and Professions
8 Code.

9 **Comment.** Section 7072 restates former Section 3097(k) without substantive change. See also
10 Sections 7100-7116 (notice). The reference to the Registrar of Contractors in the final sentence of
11 former Section 3097(k) is revised to refer to the Contractors' State License Law. This is a
12 technical, nonsubstantive change.

13 The information required in this notice is in addition to the information required by Section
14 7102 (contents of notice).

15 See also Sections 7004 ("construction lender" defined), 7014 ("express trust fund" defined),
16 7018 ("laborer" defined), 7020 ("laborers compensation fund" defined), 7028 ("owner" defined),
17 7038 ("site" defined), 7044 ("subcontractor" defined), 7050 (application of part).

18 Article 4. Notice

19 § 7100. Written notice

20 7100. (a) Notice under this part shall be in writing.

21 (b) Written notice under this part may be given by electronic communication to
22 the extent authorized under Section 7110.

23 **Comment.** Subdivision (a) of Section 7100 generalizes various provisions of former law. See,
24 e.g., former Civ. Code §§ 3092 (notice of cessation), 3093 (notice of completion), 3094 (notice of
25 nonresponsibility), 3097 (preliminary notice (private work)), 3103 (stop notice).

26 Subdivision (b) is new.

27 See also Section 14 (writing includes printing and typewriting).

28 § 7102. Contents of notice

29 7102. (a) Notice under this part shall, in addition to any other information
30 required by statute for that type of notice, include all of the following information
31 to the extent known to the person giving the notice:

32 (1) The name and address of the owner or reputed owner.

33 (2) The name and address of the direct contractor.

34 (3) The name and address of the construction lender, if any.

35 (4) A description of the site sufficient for identification, including the street
36 address of the site, if any. If a sufficient legal description of the site is given, the
37 effectiveness of the notice is not affected by the fact that the street address is
38 erroneous or is omitted.

39 (5) The name, address, and relationship to the parties of the person giving the
40 notice.

41 (6) If the person giving the notice is a claimant:

42 (i) A general statement of the labor, service, equipment, or material provided.

1 (ii) The name of the person to or for which the labor, service, equipment, or
2 material is provided.

3 (iii) A statement or estimate of the claimant's demand, after deducting all just
4 credits and offsets.

5 (b) Notice is not invalid by reason of any variance from the requirements of this
6 section if the notice is sufficient to substantially inform the person given notice of
7 the information required by this section and other information required in the
8 notice.

9 **Comment.** Section 7102 is new. It generalizes and standardizes provisions found throughout
10 former law. See, e.g., former Sections 3092 (notice of cessation), 3093 (notice of completion),
11 3097 (preliminary notice), 3103 (stop notice), 3252 (notice to principal and surety).

12 **§ 7104. Manner of giving notice**

13 7104. Except as otherwise provided by statute, notice under this part may be
14 given by any of the following means:

15 (a) Personal delivery.

16 (b) Mail in the manner provided in Section 7108.

17 (c) Leaving the notice and mailing a copy in the manner provided in Section
18 415.20 of the Code of Civil Procedure for service of summons and complaint in a
19 civil action.

20 **Comment.** Section 7104 is new. It generalizes and standardizes provisions found throughout
21 former law. See, e.g., former Sections 3097 (preliminary notice), 3103 (stop notice), 3144.5
22 (notice of release bond), 3227 (notice to principal and surety), 3259.5 (notice of recordation of
23 notice of completion), 3260.2 (stop work notice).

24 When notice is given in the manner provided in Code of Civil Procedure Section 415.20 for
25 service of summons and complaint, the notice is complete five days after leaving the notice. See
26 Section 7114 (when notice complete). The 10 day delay provided in the Code of Civil Procedure
27 for completion of service under that code is inapplicable.

28 This part may prescribe a different or more limited manner of giving a particular notice. See,
29 e.g., Section 7486 (service of petition for order releasing lien).

30 **§ 7106. Address at which notice is given**

31 7106. (a) Notice under this part shall be given to the person to be notified at an
32 address prescribed in this section. If the person giving notice knows of more than
33 one address for the person to be notified, notice shall be given at the last known
34 address of the person to be notified.

35 (b) Notice under this part shall be given to the person to be notified at the
36 address of the person's residence or place of business, or at any of the following
37 addresses:

38 (1) If the person to be notified is an owner, at the address shown on the contract,
39 the building permit, or a construction trust deed.

40 (2) If the person to be notified is a construction lender, at the address shown on
41 the construction loan agreement or construction trust deed.

1 (3) If the person to be notified is a direct contractor, at the address shown on the
2 contract or building permit, or on the records of the Contractors' State License
3 Board.

4 (4) If the person to be notified is a claimant, at the address shown on the
5 contract, preliminary notice, claim of lien, stop payment notice, or claim against a
6 payment bond, or on the records of the Contractors' State License Board.

7 (5) If the person to be notified is the principal or surety on a bond, at the address
8 provided in the bond for service of notices, papers, and other documents.

9 **Comment.** Section 7106 is new. It generalizes and standardizes provisions found throughout
10 former law.

11 Subdivision (b)(5) does not continue the unique provisions found in former Section 3227 for
12 notice to alternate persons in the case of a personal surety or admitted surety insurer. The bond
13 and undertaking law requires every bond to include the address at which the principal and sureties
14 may be served with notices, papers, and other documents. Code Civ. Proc. § 995.320.

15 **§ 7108. Mailed notice**

16 7108. (a) Notice given by mail under this part shall be by (1) first class
17 registered or certified mail or by (2) Express Mail or another method of delivery
18 providing for overnight delivery.

19 (b) Proof that the notice was given in the manner provided in this section may be
20 made by any of the following means:

21 (1) A return receipt, delivery confirmation, signature confirmation, or other
22 proof of delivery or attempted delivery provided by the United States Postal
23 Service, or a photocopy of the record of delivery and receipt maintained by the
24 United States Postal Service, showing the date of delivery and to whom delivered,
25 or in the event of nondelivery, by the returned envelope itself.

26 (2) Proof of mailing certified by the United States Postal Service.

27 (3) A tracking record or other documentation certified by an express service
28 carrier showing delivery or attempted delivery of the notice.

29 **Comment.** Section 7108 is a new provision included for drafting convenience. It generalizes a
30 number of provisions of former law, expands the methods of proof to include a certification of the
31 mailing by the United States Postal Service, and expands the methods of giving notice to include
32 delivery by express service carrier.

33 **Note.** The Commission proposes to expand the allowable methods of notice to include
34 express delivery service, and to expand proof of notice by mail to include the United States Postal
35 Service's certification of mailing. The Commission solicits comment on the proposed changes.
36 Query, should overnight delivery in this draft be replaced by express service carrier?

37 **§ 7110. Electronic communication**

38 7110. (a) As used in this section, "electronic record" has the meaning provided
39 in Section 1633.2.

40 (b) A notice under this title may be given to a person in the form of an electronic
41 record if the person has agreed to receive the record by electronic means.

42 (c) If a person that has agreed to receive a record by electronic means is a
43 consumer within the meaning of Section 7006 of Title 15 of the United States

1 Code, the person's agreement shall satisfy the requirements of Section 7001 of
2 Title 15 of the United States Code relating to consumer consent to an electronic
3 record.

4 **Comment.** Section 7110 is new. It combines the agreement requirement of the California
5 Uniform Electronic Transactions Act (UETA) (Sections 1633.1-1633.17) with the consumer
6 protections of the federal Electronic Signatures in Global and National Commerce Act (E-Sign)
7 (15 U.S.C. § 7001 *et seq.*).

8 A consumer within the meaning of E-Sign is "an individual who obtains products or services
9 used primarily for personal, family, or household purposes." 15 U.S.C. § 7006(1). The consumer
10 consent requirements of E-Sign include (i) affirmative consent, (ii) disclosure, (iii) electronic
11 access, (iv) software and hardware upgrades. See 15 U.S.C. § 7001(c)(1).

12 See also Section 7032 ("person" defined).

13 **§ 7112. Posting**

14 7112. A notice required by this part to be posted shall be displayed in a
15 conspicuous location at the site and at the main office of the site, if one exists.

16 **Comment.** Section 7112 is new. It generalizes and standardizes provisions found in former
17 law. See, e.g., former Sections 3094 (notice of nonresponsibility), 3260.2 (stop work notice).

18 **§ 7114. When notice complete**

19 7114. Notice under this part is complete and deemed to have been given at the
20 following times :

21 (a) If given by personal delivery, when delivered.

22 (b) If given by mail, when deposited in the mail or with an express service
23 carrier in the manner provided in Section 1013 of the Code of Civil Procedure.

24 (c) If given by leaving the notice and mailing a copy in the manner provided in
25 Section 415.20 of the Code of Civil Procedure for service of summons in a civil
26 action, five days after leaving the notice.

27 (d) If given by posting, when displayed.

28 (e) If given by recording, when filed for record in the office of the county
29 recorder.

30 **Comment.** Section 7114 is new. It generalizes and standardizes provisions found in former
31 law. See, e.g., former Section 3097(f)(3) (service of preliminary notice).

32 Under subdivision (b), when notice is given in the manner provided in Code of Civil Procedure
33 Section 1013, the notice is complete when deposited in the mail or with an express service carrier.
34 The 10 and 20 day delays provided in the Code of Civil Procedure for completion of service
35 under that code are inapplicable. For an exception to this rule, see Section 7486 (notice of hearing
36 on lien release petition).

37 Under subdivision (c), when notice is given in the manner provided in Code of Civil Procedure
38 Section 415.20 for service of summons and complaint, the notice is complete five days after
39 leaving the notice. The 10 day delay provided in the Code of Civil Procedure for completion of
40 service under that code is inapplicable.

41 **§ 7116. Proof of notice**

42 7116. (a) Proof that notice was given to a person in the manner required by this
43 part shall be made by the proof of notice affidavit provided in subdivision (b) and,

1 if given by mail, shall be accompanied by proof in the manner provided in Section
2 7108.

3 (b) A proof of notice affidavit shall show all of the following:

4 (1) The type or description of the notice given.

5 (2) The time, place, and manner of notice and facts showing that notice was
6 given in the manner required by statute.

7 (3) The name and address of the person to which notice was given, and, if
8 appropriate, the title or capacity in which the person was given notice.

9 **Comment.** Section 7116 is new. It generalizes and standardizes provisions found throughout
10 former law. See, e.g., former Sections 3097 (preliminary notice), 3260.2 (stop work notice).

11 Article 5. Construction Documents

12 § 7130. Contract forms

13 7130. (a) A written contract entered into between an owner and a direct
14 contractor shall provide a space for the owner to enter the following information:

15 (1) The owner's name and address, and place of business if any.

16 (2) The name and address of the construction lender if any. This paragraph does
17 not apply to a home improvement contract or swimming pool contract subject to
18 Article 10 (commencing with Section 7150) of Chapter 9 of Division 3 of the
19 Business and Professions Code.

20 (b) A written contract entered into between a direct contractor and
21 subcontractor, or between subcontractors, shall provide a space for the name and
22 address of the owner, direct contractor, and construction lender if any.

23 **Comment.** Section 7130 continues the parts of former Section 3097(l)-(m) relating to the
24 content of contracts, deleting the limitation to the owner's residence address. The reference to
25 "written" contract is added to subdivision (b) for consistency with subdivision (a). The reference
26 to "lender or lenders" in subdivision (a) is shortened to "lender" for consistency with subdivision
27 (b). See Section 14 (singular includes plural, and plural includes singular). These and other minor
28 wording changes are technical, nonsubstantive revisions. For the direct contractor's duty to
29 provide information to persons seeking to serve a preliminary notice, see Section 7210.

30 See also Sections 7004 ("construction lender" defined), 7012 ("direct contractor" defined),
31 7028 ("owner" defined), 7044 ("subcontractor" defined).

32 § 7132. Designation of construction lender on building permit

33 7132. (a) A public entity that issues building permits shall, in its application
34 form for a building permit, provide space and a designation for the applicant to
35 enter the name, branch designation, if any, and address of the construction lender
36 and shall keep the information on file open for public inspection during the regular
37 business hours of the public entity.

38 (b) If there is no known construction lender, the applicant shall note that fact in
39 the designated space.

1 (c) Failure of the applicant to indicate the name and address of the construction
2 lender on the application does not relieve a person required to give the
3 construction lender preliminary notice from that duty.

4 **Comment.** Section 7132 continues former Section 3097(i) without substantive change.

5 See also Sections 7004 (“construction lender” defined), 7032 (“person” defined), 7034
6 (“preliminary notice” defined), 7036 (“public entity” defined).

7 **Note.** We have corrected a typographical error in the existing statute, which includes a stray
8 comma between the words “branch” and “designation” in subdivision (a). Branch information
9 may be important because a stop payment notice must be given at the office or branch of the
10 lender administering or holding construction funds.

11 A random sampling of building permit application forms, however, indicates that half the cities
12 don’t provide any space for construction lender information, and those that do provide space
13 don’t inquire about branches. Does this provision serve a useful purpose? But see Health &
14 Safety Code § 19825 (building permit).

15 § 7134. Construction trust deed

16 7134. (a) A mortgage, deed of trust, or other instrument securing a loan, any of
17 the proceeds of which may be used for a work of improvement, shall bear the
18 designation “Construction Trust Deed” prominently on its face and shall state all
19 of the following:

20 (1) The name and address of the construction lender.

21 (2) The name and address of the owner of the property described in the
22 instrument.

23 (3) A legal description of the property that secures the loan and, if known, the
24 street address of the property.

25 (b) Failure to comply with subdivision (a) does not affect the validity of the
26 mortgage, deed of trust, or other instrument.

27 (c) Failure to comply with subdivision (a) does not relieve a person required to
28 give preliminary notice from that duty.

29 (d) The county recorder of the county in which the instrument is recorded shall
30 indicate in the general index of the official records of the county that the
31 instrument secures a construction loan.

32 **Comment.** Section 7134 continues former Section 3097(j) without substantive change.

33 See also Sections 7004 (“construction lender” defined), 7028 (“owner” defined), 7032
34 (“person” defined), 7034 (“preliminary notice” defined), 7046 (“work of improvement” defined).

35 Article 6. Bonds

36 § 7140. Application of Bond and Undertaking Law

37 7140. The Bond and Undertaking Law, Chapter 2 (commencing with Section
38 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, applies to a bond
39 given under this part.

40 **Comment.** Section 7140 is new. It is a specific application of Code of Civil Procedure Section
41 995.020 (application of Bond and Undertaking Law)

1 Former Section 3227, relating to notice to principal and surety, is not continued. Its substance
2 is superseded by Sections 7100-7116 (notice).

3 **§ 7142. Release of surety from liability**

4 7142. None of the following releases a surety from liability on a bond given
5 under this part:

6 (a) A change to a contract, plan, specification, or agreement for a work of
7 improvement or for labor, service, equipment, or material provided for a work of
8 improvement.

9 (b) A change to the terms of payment or an extension of the time for payment
10 for a work of improvement.

11 (c) A rescission or attempted rescission of a contract, agreement, or bond.

12 (d) A condition precedent or subsequent in the bond purporting to limit the right
13 of recovery of a claimant otherwise entitled to recover pursuant to a contract,
14 agreement, or bond.

15 (e) In the case of a bond given for the benefit of claimants, the fraud of a person
16 other than the claimant seeking to recover on the bond.

17 **Comment.** Section 7142 restates former Section 3225 without substantive change. See also
18 Section 7057 (effect of act by owner).

19 See also Sections 7002 (“claimant” defined), 7006 (“contract” defined), 7016 (“labor, service,
20 equipment, or material” defined), 7032 (“person” defined), 7046 (“work of improvement”
21 defined).

22 **§ 7144. Construction of bond**

23 7144. (a) A bond given under this part shall be construed most strongly against
24 the surety and in favor of the beneficiary.

25 (b) A surety is not released from liability to the beneficiary by reason of a
26 breach of the contract between the owner and direct contractor or on the part of the
27 beneficiary.

28 (c) The sole conditions of recovery on the bond are that the beneficiary is a
29 person described in Article 1 (commencing with Section 7400) of Chapter 4 and
30 has not been paid the full amount of the claim.

31 **Comment.** Section 7144 restates former Section 3226 without substantive change. See also
32 Sections 7400-7406 (who is entitled to lien).

33 See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7028 (“owner”
34 defined), 7032 (“person” defined).

35 Cf. Code Civ. Proc. § 995.130 (“beneficiary” defined).

36 **Article 7. Completion**

37 **§ 7150. Completion**

38 7150. (a) For the purpose of this part, completion of a work of improvement
39 occurs at the earliest of the following times:

40 (1) Actual completion.

41 (2) Occupation or use by the owner accompanied by cessation of labor.

1 (3) Cessation of labor for a continuous period of 60 days.

2 (4) Recordation of a notice of completion after cessation of labor for a
3 continuous period of 30 days.

4 (b) Notwithstanding subdivision (a), if a work of improvement is subject to
5 acceptance by a public entity, completion occurs on acceptance.

6 **Comment.** Section 7150 restates former Section 3086 to the extent it applied to a private work,
7 but omits the provision of the former law that defined completion to include “acceptance” by the
8 owner. References to occupation or use by an owner include those actions by the owner’s agent.
9 See Section 7028 (“owner” defined).

10 The provision in subdivision (b) for acceptance by a public entity refers to acceptance pursuant
11 to a legislative enactment of the public entity and not to inspection and approval or issuance of a
12 certificate of occupancy under building regulations.

13 See also Sections 7036 (“public entity” defined), 7046 (“work of improvement” defined).

14 **Note.** The Commission particularly solicits comment on:

- 15 • Whether the provision of existing law for completion on “acceptance” by the owner is
16 useful. That provision is not continued in the current draft because it appears to be rarely
17 used, and there is no mechanism for communication of acceptance to the claimant.
- 18 • Whether subdivision (b), relating to acceptance by a public entity, is useful.

19 **§ 7152. Notice of completion**

20 7152. (a) On or within 15 days after completion of a work of improvement an
21 owner may record a notice of completion.

22 (b) The notice of completion shall be signed and verified by the owner, and
23 include all of the following information:

24 (1) If the notice is given only of completion of a contract for a particular portion
25 of the work of improvement as provided in Section 7154, the name of the direct
26 contractor under that contract and a general statement of the kind of labor, service,
27 equipment, or material provided pursuant to the contract.

28 (2) If signed by the owner’s successor in interest, the name and address of the
29 successor’s transferor.

30 (3) The nature of the interest or estate of the owner.

31 (4) The date of completion. An erroneous statement of the date of completion
32 does not affect the effectiveness of the notice if the true date of completion is on or
33 before the date of recordation of the notice.

34 (5) If the notice is based on cessation of labor, the date on or about which labor
35 ceased, and that cessation of labor has been continuous until recordation of the
36 notice.

37 (6) An affidavit of mailing in the manner provided in Section 1013a of the Code
38 of Civil Procedure, showing all persons given notice under Section 7156.

39 **Comment.** Section 7152 combines former Section 3093 (notice of completion) with former
40 Section 3092 (notice of cessation). For the date of completion of a work of improvement, see
41 Section 7150. For the effect of a notice of completion, see Sections 7412-7414 (time for claim of
42 lien), 7460 (time for commencement of enforcement action). See also Sections 7100-7116
43 (notice). The information required in this notice is in addition to the information required by
44 Section 7102 (contents of notice).

1 This section extends the 10-day period for recording a notice of completion under former law
2 to 15 days. A claim of lien must be filed within 30 or 60 days after recording a notice of
3 completion (depending on the nature of the claimant). See Sections 7412 and 7414 (recordation
4 of claim of lien).

5 A notice of completion is ineffective to shorten the time for a claim of lien unless notice of
6 recordation is given to the person whose claim of lien is affected. See Section 7156 (notice of
7 recordation by owner). The requirement of an affidavit of mailing in subdivision (b)(6) is new.
8 See also Code Civ. Proc. § 2015.5 (declaration or certificate under penalty of perjury).

9 A notice of completion is recorded in the office of the county recorder of the county in which
10 the work of improvement or part of it is situated. Section 7056(a) (filing and recording of papers).
11 A notice of completion is recorded when it is filed for record. Section 7056(b).

12 As used in this section, the owner is the person that causes a building, improvement, or
13 structure, to be constructed, altered, or repaired (or the owner's successor in interest at the date of
14 a notice of completion is recorded) whether the interest or estate of the owner is in fee, as vendee
15 under a contract of purchase, as lessee, or other interest or estate less than the fee, and includes a
16 cotenant. A notice of completion may be signed and verified by the owner's agent. See Sections
17 7028 ("owner" defined), 7058 (co-owners).

18 The reference to a successor's "transferors" is omitted from subdivision (b)(2). See Section 14
19 (singular includes plural).

20 See also Sections 7016 ("labor, service, equipment, or material" defined), 7012 ("direct
21 contractor" defined), 7038 ("site" defined), 7046 ("work of improvement" defined), Section 7056
22 (filing and recording of papers).

23 § 7154. Notice of completion of contract for portion of work of improvement

24 7154. If a work of improvement is made pursuant to two or more contracts, each
25 covering a portion of the work of improvement:

26 (a) The owner may record a notice of completion of a contract for a portion of
27 the work of improvement. On recordation of the notice of completion, for the
28 purpose of Sections 7412 and 7414 a direct contractor is deemed to have
29 completed the contract for which the notice of completion is recorded and a
30 claimant other than a direct contractor is deemed to have ceased providing labor,
31 service, equipment, or material.

32 (b) If the owner does not record a notice of completion under this section, the
33 period for recording a claim of lien is that provided in Sections 7412 and 7414.

34 **Comment.** Section 7154 continues the substance of former Section 3117, but eliminates the
35 10-day period for recording a notice of completion. A claim of lien must be filed within 60 days
36 after recording a notice of completion (depending on the nature of the claimant), subject to a
37 maximum of 90 days after actual completion. See Sections 7412 and 7414 (recordation of claim
38 of lien). However, an owner that records a notice of completion that states an incorrect date of
39 completion may be estopped from asserting the running of the filing period. See *Doherty v.*
40 *Carruthers*, 171 Cal. App. 2d 214, 340 P.2d 58 (1959).

41 This section omits the rules found in former law governing the time for recording a claim of
42 lien after a notice of completion for a portion of a work of improvement. The general rules
43 governing the time for recording do not distinguish among types of notice of completion, and
44 appear to be satisfactory for purposes of this section, with the clarification set out in subdivision
45 (a). See Sections 7412 and 7414 (recordation of claim of lien).

46 See also Sections 7002 ("claimant" defined), 7016 ("labor, service, equipment, or material"
47 defined), 7012 ("direct contractor" defined), 7028 ("owner" defined), 7046 ("work of
48 improvement" defined).

1 **Note. The Commission solicits comment on the policy of this section.** Where there are two
2 or more separate contracts on a single job, it may be advantageous for an owner-builder, for
3 example, to narrow liability exposure. A notice of completion as to a portion of a project can also
4 benefit a subcontractor whose right to received a retention may be triggered by the notice of
5 completion. On the other hand, a notice of completion as to a portion of a project can also cause
6 problems by triggering a lien claim or foreclosure as to that portion of the project. If that portion
7 of the project is stand-alone, the foreclosure may be feasible; if it is part of an integrated whole,
8 foreclosure may be difficult.

9 **§ 7156. Notice of recordation by owner**

10 7156. (a) An owner that records a notice of completion shall on recordation give
11 a copy of the notice to all of the following persons:

12 (1) A direct contractor.

13 (2) A claimant that has given the owner preliminary notice.

14 (b) If the owner fails to give notice to a person under subdivision (a), the notice
15 of completion is ineffective to shorten the time within which the person may
16 record a claim of lien under Sections 7412 and 7414. The ineffectiveness of the
17 notice of completion is the sole liability of the owner for failure to give notice to a
18 person under subdivision (a).

19 (c) This section does not apply to any of the following owners:

20 (1) A person that occupies the property as a personal residence, if the dwelling
21 contains four or fewer residential units.

22 (2) A person that has a security interest in the property.

23 (3) A person that obtains an interest in the property pursuant to a transfer
24 described in subdivision (b), (c), or (d) of Section 1102.2.

25 **Comment.** Section 7156 restates former Section 3259.5, replacing the notice of recordation
26 with a copy of the recorded notice and expanding the manner of notice. See Section 7104
27 (manner of giving notice). This provision is limited to a private work. See Section 7050
28 (application of part). The section eliminates the former 10 day notice period and requires
29 immediate notice. See also Section 7152(b)(7) and Code Civ. Proc. § 1013a(c) (affidavit of
30 mailing). As used in this section “owner” includes a person who has an interest in property (or the
31 person’s successor in interest on the date a notice of completion is recorded) that causes a
32 building, improvement, or structure, to be constructed, altered, or repaired on the property), and
33 includes a cotenant. See Section 7028 (“owner” defined). A notice is recorded when it is filed for
34 record. Section 7056 (filing and recording of papers). The references to a “mechanic’s” lien in
35 subdivision (a) are deleted. Subdivision (a) is intended to apply to a site improvement lien as
36 well.

37 The notice may no longer be given by regular mail. For service and proof of service by mail,
38 see Section 7108 (mailed notice).

39 Subdivision (b) is phrased in terms of the ineffectiveness of the notice of completion, in place
40 of the former references to extension of time.

41 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7012 (“direct contractor”
42 defined), 7032 (“person” defined), 7034 (“preliminary notice” defined).

Article 8. Waiver and Release

§ 7160. Terms of contract

7160. An owner or direct contractor may not, by contract or otherwise, waive, affect, or impair a claimant's rights under this part, whether with or without notice, and any term of a contract that purports to do so is void and unenforceable unless and until the claimant executes and delivers a waiver and release under this article.

Comment. Section 7160 continues the first and second sentences of former Section 3262(a) without substantive change. See Section 7002 ("claimant" defined).

See also Sections 7002 ("claimant" defined), 7012 ("direct contractor" defined), 7028 ("owner" defined).

§ 7162. Waiver and release

7162. A claimant's waiver and release does not release the owner, construction lender, or surety on a payment bond from a claim or lien unless both of the following conditions are satisfied:

(a) The waiver and release is in substantially the form provided in this article and is signed by the claimant.

(b) If the release is a conditional release, there is evidence of payment to the claimant. Evidence of payment may be (1) the claimant's endorsement on a single or joint payee check that has been paid by the financial institution on which it was drawn or (2) written acknowledgment of payment by the claimant.

Comment. Section 7162 continues the third and fourth sentences of former Section 3262(a) without substantive change. The waiver and release may be signed by the claimant's agent. See Section 7060 (agency). The term "financial institution" replaces "bank" in subdivision (b) and in the forms provided in this article.

See also Sections 7002 ("claimant" defined), 7004 ("construction lender" defined), 7024 ("lien" defined), 7028 ("owner" defined).

§ 7164. Statement of claimant

7164. An oral or written statement purporting to waive, release, impair or otherwise adversely affect a claim or lien is void and unenforceable and does not create an estoppel or impairment of the claim or lien unless either of the following conditions is satisfied:

(a) The statement is pursuant to a waiver and release under this article.

(b) The claimant has actually received payment in full for the claim.

Comment. Section 7164 continues former Section 3262(b) without substantive change.

See also Section 7002 ("claimant" defined).

§ 7166. Reduction or release of stop payment notice

7166. (a) A claimant may reduce the amount of, or release in its entirety, a stop payment notice. The reduction or release shall be in writing and may be given in a form other than a form of waiver and release prescribed in this article.

(b) A claimant's reduction or release of a stop payment notice has the following effect:

1 (1) The reduction or release releases the claimant’s right to enforce payment of
2 the claim stated in the notice to the extent of the reduction or release.

3 (2) The reduction or release releases the person given the notice from the
4 obligation to withhold funds pursuant to the notice to the extent of the reduction or
5 release.

6 (3) The reduction or release does not preclude the claimant from giving a
7 subsequent stop payment notice that is timely and proper.

8 (4) The reduction or release does not release any right of the claimant other than
9 the right to enforce payment of the claim stated in the stop payment notice to the
10 extent of the reduction or release.

11 **Comment.** Section 7166 restates the second, third, and fourth sentences of subdivision (b) of
12 former Section 3262. The provisions apply to a stop payment notice given to a construction
13 lender as well as to a stop payment notice given to the owner.

14 See also Sections 7002 (“claimant” defined), 7032 (“person” defined), 7042 (“stop payment
15 notice” defined).

16 **§ 7168. Accord and satisfaction or settlement agreement not affected**

17 7168. This article does not affect the enforceability of either an accord and
18 satisfaction concerning a good faith dispute or an agreement made in settlement of
19 an action pending in court if the accord and satisfaction or agreement and
20 settlement make specific reference to the claim or lien.

21 **Comment.** Section 7168 continues former Section 3262(c) without substantive change.

22 See also Section 7024 (“lien” defined).

23 **§ 7170. Conditional waiver and release on progress payment**

24 7170. If a claimant is required to execute a waiver and release in exchange for,
25 or in order to induce the payment of, a progress payment and the claimant is not,
26 in fact, paid in exchange for the waiver and release or a single payee check or joint
27 payee check is given in exchange for the waiver and release, the waiver and
28 release shall be in substantially the following form:

29 **CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

30 **NOTICE.** This document waives the claimant’s lien and other rights effective on
31 receipt of payment. A person should not rely on this document unless satisfied that
32 the claimant has received payment.

33 **Identifying Information**

34 Name of Claimant: _____

35 Name of Customer: _____

36 Job Location: _____

37 Owner: _____

38 Through Date: _____

39

1 **Conditional Waiver and Release**

2 This document waives and releases lien, stop payment notice, and payment bond
3 rights the claimant has for labor, service, equipment, and material provided to the
4 customer on this job through the Through Date of this document. This document is
5 effective only on the claimant's receipt of payment from the financial institution
6 on which the following check is drawn:

7 Maker of Check: _____
8 Amount of Check: \$ _____
9 Check Payable to: _____

10 **Exceptions**

11 This document does not affect any of the following:

- 12 (1) Retentions.
13 (2) Extras for which the claimant has not received payment.
14 (3) The following progress payments for which the claimant has previously given
15 a conditional waiver and release but has not received payment:

16 Date of waiver and release: _____

17 Amount remaining unpaid: \$ _____

- 18 (4) Contract rights, including (i) a right based on rescission, abandonment, or
19 breach of contract, and (ii) the right to recover compensation for labor, service,
20 equipment, or material not compensated by the payment.

21 **Signature**

22 Claimant's Signature: _____

23 Claimant's Title: _____

24
25 **Comment.** Section 7170 restates former Section 3262(d)(1), with the addition of language
26 relating to progress payments covered by previous releases that have not been paid. The statutory
27 form is recast for clarity.

28 See also Section 7002 ("claimant" defined).

29 **§ 7172. Unconditional waiver and release on progress payment**

30 7172. If the claimant is required to execute a waiver and release in exchange for,
31 or in order to induce payment of, a progress payment and the claimant asserts in
32 the waiver it has, in fact, been paid the progress payment, the waiver and release
33 shall be in substantially the following form, with the text of the "Notice to
34 Claimant" in at least as large a type as the largest type otherwise in the form:

35 UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

36 NOTICE TO CLAIMANT: This document waives and releases rights
37 unconditionally and states that you have been paid for giving up those rights. This

1 document is enforceable against you if you sign it, even if you have not been paid.
2 If you have not been paid, use a conditional waiver and release form.

3 **Identifying Information**

4 Name of Claimant: _____

5 Name of Customer: _____

6 Job Location: _____

7 Owner: _____

8 Through Date: _____

9 **Unconditional Waiver and Release**

10 This document waives and releases lien, stop payment notice, and payment bond
11 rights the claimant has for labor, service, equipment, and material provided to the
12 customer on this job through the Through Date of this document. The claimant has
13 received the following payment:

14 Amount of payment: \$ _____

15 **Exceptions**

16 This document does not affect any of the following:

17 (1) Retentions.

18 (2) Extras for which the claimant has not received payment.

19 (3) Contract rights, including (i) a right based on rescission, abandonment, or
20 breach of contract, and (ii) the right to recover compensation for labor, service,
21 equipment, or material not compensated by the payment.

22 **Signature**

23 Claimant's Signature: _____

24 Claimant's Title: _____

25

26 **Comment.** Section 7172 restates former Section 3262(d)(2) without substantive change. The
27 references to a "mechanic's" lien are deleted from this section; it applies to a design professionals
28 lien or a site improvement lien as well. The statutory form is recast for clarity.

29 See also Section 7002 ("claimant" defined).

30 **§ 7174. Conditional waiver and release on final payment**

31 7174. If the claimant is required to execute a waiver and release in exchange for,
32 or in order to induce the payment of, a final payment and the claimant is not, in
33 fact, paid in exchange for the waiver and release or a single payee check or joint
34 payee check is given in exchange for the waiver and release, the waiver and
35 release shall be in substantially the following form:

1 **CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

2 NOTICE. This document waives the claimant’s lien and other rights effective on
3 receipt of payment. A person should not rely on this document unless satisfied that
4 the claimant has received payment.

5 **Identifying Information**

6 Name of Claimant: _____

7 Name of Customer: _____

8 Job Location: _____

9 Owner: _____

10 Date: _____

11 **Conditional Waiver and Release**

12 This document waives and releases lien, stop payment notice, and payment bond
13 rights the claimant has for all labor, service, equipment, and material provided to
14 the customer on this job. This document is effective only on the claimant’s receipt
15 of payment from the financial institution on which the following check is drawn:

16 Maker of Check: _____

17 Amount of Check: \$ _____

18 Check Payable to: _____

19 **Exceptions**

20 This document does not affect any of the following:

21 (1) Disputed claims for extras in the amount of \$ _____

22 (2) The following progress payments for which the claimant has previously given
23 a conditional waiver and release but has not received payment:

24 Date of waiver and release: _____

25 Amount remaining unpaid: \$ _____

26 **Signature**

27 Claimant’s Signature: _____

28 Claimant’s Title: _____

29
30 **Comment.** Section 7174 continues former Section 3262(d)(3), with the addition of language
31 relating to progress payments covered by previous releases that have not been paid, and the
32 addition of a line for identification of the waivant’s customer. The references to a “mechanic’s”
33 lien are deleted from this section; it applies to a design professionals lien or a site improvement
34 lien as well. The statutory form is recast for clarity.

35 See also Section 7002 (“claimant” defined).

36 **§ 7176. Unconditional waiver and release on final payment**

37 7176. If the claimant is required to execute a waiver and release in exchange for,
38 or in order to induce payment of, a final payment and the claimant asserts in the
39 waiver it has, in fact, been paid the final payment, the waiver and release shall be

1 in substantially the following form, with the text of the “Notice to Claimant” in at
2 least as large a type as the largest type otherwise in the form:

3 UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

4 NOTICE TO CLAIMANT: This document waives and releases rights unconditionally
5 and states that you have been paid for giving up those rights. This document is
6 enforceable against you if you sign it, even if you have not been paid. If you have
7 not been paid, use a conditional waiver and release form.

8 **Identifying Information**

9 Name of Claimant: _____

10 Name of Customer: _____

11 Job Location: _____

12 Owner: _____

13 Date: _____

14 **Unconditional Waiver and Release**

15 This document waives and releases lien, stop payment notice, and payment bond
16 rights the claimant has for all labor, service, equipment, and material provided to
17 the customer on this job. The claimant has been paid in full.

18 **Exceptions**

19 This document does not affect any of the following:

20 (1) Disputed claims for extras in the amount of \$_____

21 **Signature**

22 Claimant’s Signature: _____

23 Claimant’s Title: _____

24
25 **Comment.** Section 7176 continues former Section 3262(d)(4) without substantive change. The
26 references to a “mechanic’s” lien are deleted from this section; it applies to a design professionals
27 lien or a site improvement lien as well. The statutory form is recast for clarity.

28 See also Section 7002 (“claimant” defined).

29 CHAPTER 2. PRELIMINARY NOTICE

30 **§ 7200. Preliminary notice prerequisite to remedies**

31 7200. (a) Except as otherwise provided in this section, preliminary notice is a
32 necessary prerequisite to the validity of a lien, stop payment notice, or claim
33 against a payment bond.

34 (b) A laborer or laborers compensation fund is not required to give preliminary
35 notice.

36 (c) A direct contractor is required to give preliminary notice only to a
37 construction lender.

1 **Comment.** Subdivision (a) of Section 7200 restates part of the introductory clause of former
2 Section 3097 without substantive change. This chapter is limited to private work. See Section
3 7050 (application of part).

4 Subdivision (b) restates part of former Section 3097(a) without substantive change.

5 Subdivision (c) restates parts of former Section 3097(a) and (b), omitting the exception of “the
6 contractor”. Although a direct contractor is generally excused from the preliminary notice
7 requirement, the direct contractor must give preliminary notice to a construction lender under
8 Section 7202(c).

9 The transitional provisions of former Section 3097(p) are not continued due to lapse of time.

10 See also Sections 7002 (“claimant” defined), 7018 (“laborer” defined), 7020 (“laborers
11 compensation fund” defined), 7024 (“lien” defined), 7012 (“direct contractor” defined).

12 § 7202. Preliminary notice requirement

13 7202. Before recording a claim of lien, giving a stop payment notice, or
14 asserting a claim against a payment bond, the claimant shall give preliminary
15 notice to each of the following persons:

16 (a) The owner or reputed owner.

17 (b) The direct contractor or reputed contractor.

18 (c) The construction lender or reputed lender, if any.

19 **Comment.** Section 7202 restates parts of the introductory clause and subdivision (a) of former
20 Section 3097, without substantive change. Some repetitive detail is omitted in reliance on defined
21 terms and other substantive provisions. The preliminary notice must be in writing. Section 7204
22 (contents of preliminary notice).

23 For an exception to the requirement that preliminary notice must be given before asserting a
24 claim against a payment bond, see Section 7612.

25 Former Sections 3097(f) and 3097.1 are not continued. General provisions of this part expand
26 the methods of notice. See Sections 7100-7116 (notice). See also Code Civ. Proc. § 2015.5
27 (declaration or certificate under penalty of perjury).

28 See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7024
29 (“lien” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined), 7032 (“person”
30 defined).

31 § 7204. Contents of preliminary notice

32 7204. (a) Preliminary notice shall include the following statement in boldface
33 type:

34 NOTICE TO PROPERTY OWNER

35 **If the person or firm that has given you this notice is not paid in**
36 **full for labor, service, equipment, or material provided or to be**
37 **provided to your construction project, a lien may be placed on your**
38 **property. Foreclosure of the lien may lead to loss of all or part of your**
39 **property, even though you have paid your contractor in full. You may**
40 **wish to protect yourself against this by (1) requiring your contractor to**
41 **provide a signed release by the person or firm that has given you this**
42 **notice before making payment to your contractor, or (2) any other**
43 **method that is appropriate under the circumstances.**

44 **If you record a notice of completion of your construction project,**
45 **you must within 10 days after recording send a copy of the notice of**

1 **completion to your contractor and the person or firm that has given you**
2 **this notice. The notice must be sent by registered or certified mail.**
3 **Failure to send the notice will extend the deadline to record a claim of**
4 **lien. You are not required to send the notice if you are a residential**
5 **homeowner of a dwelling containing four or fewer units.**

6 (b) If preliminary notice is given by a subcontractor that has not paid all
7 compensation due to a laborer or laborers compensation fund, the notice shall
8 include the name and address of the laborer and any laborers compensation fund to
9 which payments are due.

10 (c) If an invoice for material or certified payroll contains the information
11 required by this section and Section 7102, a copy of the invoice or payroll, given
12 in the manner provided by this part for giving of notice, is sufficient.

13 **Comment.** Section 7204 continues the substance of former Section 3097(c)(1)-(6), the
14 unnumbered paragraph following paragraph (6), and the requirement of former Section 3097(a)
15 that the preliminary notice be written. See also Sections 7100-7116 (notice). The reference to an
16 “express trust fund” is replaced by the defined term, “laborers compensation fund.” See Section
17 7020 (“laborers compensation fund” defined).

18 The information required in this notice is in addition to the information required by Section
19 7102 (contents of notice).

20 See also Sections 7008 (“contract price” defined), 7016 (“labor, service, equipment, or
21 material” defined), 7018 (“laborer” defined), 7024 (“lien” defined), 7032 (“person” defined),
22 7038 (“site” defined), 7044 (“subcontractor” defined).

23 **§ 7206. Effect of preliminary notice**

24 7206. (a) A claimant may record a claim of lien, file a stop payment notice, or
25 assert a claim against a payment bond only for labor, service, equipment, or
26 material provided within 20 days before giving preliminary notice and at any time
27 thereafter.

28 (b) Notwithstanding subdivision (a), a design professional may record a claim of
29 lien, file a stop payment notice, or assert a claim against a payment bond for
30 design professional services provided for the design of the work of improvement if
31 the design professional gives preliminary notice not later than 20 days after the
32 work of improvement has commenced.

33 **Comment.** Subdivision (a) of Section 7206 supersedes former Section 3097(d). The provision
34 is simplified so that it refers only to the effect of giving preliminary notice.

35 Subdivision (b) restates the unnumbered paragraph preceding former Section 3097(d).

36 See also Sections 7002 (“claimant” defined), 7010 (“design professional” defined), 7016
37 (“labor, service, equipment, or material” defined), 7024 (“lien” defined), 7046 (“work of
38 improvement” defined).

39 **§ 7208. Coverage of preliminary notice**

40 7208. (a) Except as provided in subdivision (b), a claimant need give only one
41 preliminary notice to each person to which notice must be given under this chapter
42 with respect to all labor, service, equipment, and material provided by the claimant
43 for a work of improvement.

1 (b) If a claimant provides labor, service, equipment, or material pursuant to
2 contracts with more than one subcontractor, the claimant shall give a separate
3 preliminary notice with respect to labor, service, equipment, or material provided
4 to each contractor.

5 (c) A preliminary notice that contains a general description of labor, service,
6 equipment, or material provided by the claimant through the date of the notice also
7 covers labor, service, equipment, or material provided by the claimant after the
8 date of the notice whether or not they are within the scope of the general
9 description contained in the notice

10 **Comment.** Section 7208 restates former Section 3097(g) without substantive change.

11 See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material”
12 defined), 7032 (“person” defined), 7044 (“subcontractor” defined), 7046 (“work of improvement”
13 defined).

14 **§ 7210. Direct contractor’s duty to provide information**

15 7210. A direct contractor shall make available to any person seeking to give
16 preliminary notice the following information:

17 (a) The name and address of the owner.

18 (b) The name and address of the construction lender, if any.

19 **Comment.** Section 7210 continues the parts of former Section 3097(l)-(m) relating to the
20 direct contractor’s duty to provide information, deleting the limitation to the owner’s residence
21 address. For provisions concerning the content of contracts, see Section 7130 (contract forms).

22 See also Sections 14 (singular includes plural), 7004 (“construction lender” defined), 7012
23 (“direct contractor” defined), 7028 (“owner” defined), 7032 (“person” defined).

24 **§ 7212. Owner’s duty to give notice of construction loan**

25 7212. If a construction loan is obtained after commencement of work, the owner
26 shall provide the name and address of the construction lender to each person that
27 has given the owner preliminary notice.

28 **Comment.** Section 7212 continues former Section 3097(n) without substantive change. The
29 reference to commencement of construction is changed to commencement of work for
30 consistency with the remainder of this part.

31 See also Sections 7004 (“construction lender” defined), 7028 (“owner” defined), 7032
32 (“person” defined).

33 **§ 7214. Waiver void**

34 7214. An agreement made or entered into by an owner whereby the owner
35 agrees to waive the rights conferred on the owner by this chapter is void and
36 unenforceable.

37 **Comment.** Section 7214 continues former Section 3097(e) without substantive change.

38 See also Section 7028 (“owner” defined).

39 **§ 7216. Disciplinary action**

40 7216. A licensed subcontractor is subject to disciplinary action under the
41 Contractors’ State License Law, Chapter 9 (commencing with Section 7000) of

1 Division 3 of the Business and Professions Code, if all of the following conditions
2 are satisfied:

3 (a) The subcontractor does not pay all compensation due to a laborers
4 compensation fund.

5 (b) The subcontractor fails to give preliminary notice or include in the notice the
6 information required by subdivision (b) of Section 7204.

7 (c) The subcontractor's failure results in the laborers compensation fund
8 recording a claim of lien, filing a stop payment notice, or asserting a claim against
9 a payment bond.

10 (d) The amount due the laborers compensation fund is not paid.

11 **Comment.** Section 7216 continues the substance of the second paragraph of former Section
12 3097(h). The first paragraph, relating to disciplinary action if a subcontractor fails to give
13 preliminary notice on a work of improvement exceeding \$400, is not continued.

14 The reference to an "express trust fund" is replaced by the defined term, "laborers
15 compensation fund" which arguably expands the scope of the provision. See Section 7020
16 ("laborers compensation fund" defined).

17 See also Sections 7024 ("lien" defined), 7034 ("preliminary notice" defined), 7044
18 ("subcontractor" defined), 7046 ("work of improvement" defined).

19 **§ 7218. Notices filed with county recorder**

20 7218. The county recorder may cause to be destroyed all documents filed under
21 subdivision (o) of former Section 3097.

22 **Comment.** Section 7218 supersedes former Section 3097(o) relating to filing preliminary
23 notice with the county recorder. This part no longer provides for filing a preliminary notice with
24 the county recorder or for the county recorder to give notice to persons who filed preliminary
25 notice of the recording of a notice of completion or notice of cessation.

26 The former reference to the date after which the county recorder is authorized to act (January 1,
27 2007) is deleted as a transitional provision that is now obsolete.

28 **CHAPTER 3. DESIGN PROFESSIONALS LIEN**

29 **§ 7300. Lien**

30 7300. (a) A design professional has, from the date of recordation of a claim of
31 lien under this chapter, a lien on the site notwithstanding the absence of
32 commencement of the planned work of improvement, if the owner that contracted
33 for the design professional's services is also the owner of the site at the time of
34 recordation of the claim of lien.

35 (b) The lien of the design professional is for the amount of the design
36 professional's fee for services provided under the contract or the reasonable value
37 of those services, whichever is less. The amount of the lien is reduced by the
38 amount of any deposit or prior payment under the contract.

39 (c) A design professional may not record a claim of lien, and a lien may not be
40 created, under this chapter unless a building permit or other governmental
41 approval in furtherance of the work of improvement has been obtained in
42 connection with or utilizing the services provided by the design professional.

1 **Comment.** Section 7300 restates former Section 3081.2. See also Section 7060 (agency). The
2 amount of the lien is limited to the fee for services provided under the contract, rather than the
3 amount provided before commencement of work, since the lien provided by this section is
4 available even though construction is not commenced. See also Section 7304 (lien terminates on
5 commencement of work).

6 See also Sections 7010 (“design professional” defined), 7024 (“lien” defined), 7028 (“owner”
7 defined), 7038 (“site” defined), 7046 (“work of improvement” defined).

8 **§ 7302. Prerequisites for lien**

9 7302. A design professional is not entitled to a lien under this chapter unless all
10 of the following conditions are satisfied:

11 (a) The work of improvement for which the design professional provided
12 services has not commenced.

13 (b) The owner defaults in a payment required under the contract or refuses to
14 pay the demand of the design professional made under the contract.

15 (c) Not less than 10 days before recording a claim of lien, the design
16 professional gives the owner notice making a demand for payment and stating that
17 a default has occurred under the contract and the amount of the default.

18 (d) The design professional records a claim of lien. The claim of lien shall
19 include all of the following information:

20 (1) The name of the design professional.

21 (2) The amount of the claim.

22 (3) The current owner of record of the site.

23 (4) A legal description of the site.

24 (5) Identification of the building permit or other governmental approval for the
25 work of improvement.

26 **Comment.** Section 7302 restates former Section 3081.3, with the clarification that a lien under
27 this chapter is unavailable if construction has commenced. See subdivision (a). See also Sections
28 7100-7116 (notice), 7056 (filing and recording of papers).

29 A building permit or other governmental approval for the work of improvement obtained in
30 connection with or utilizing the services provided by the design professional is required as a
31 condition of recording the claim of lien under Section 7300 (lien).

32 See also Sections 7006 (“contract” defined), 7010 (“design professional” defined), 7024 (“lien”
33 defined), 7028 (“owner” defined), 7038 (“site” defined), 7046 (“work of improvement” defined).

34 **§ 7304. Creation, expiration, and release of lien**

35 7304. (a) On recordation of the claim of lien, a lien is created in favor of the
36 named design professional.

37 (b) The lien automatically expires and is null and void and of no further force or
38 effect on the occurrence of either of the following events:

39 (1) The commencement of the work of improvement for which the design
40 professional provided services.

41 (2) The expiration of 90 days after recording the claim of lien, unless the design
42 professional commences an action to enforce the lien within that time.

1 (c) If the owner partially or fully satisfies the lien, the design professional shall
2 execute and record a waiver and release under Article 8 (commencing with
3 Section 7160) of Chapter 2.

4 **Comment.** Section 7304 restates former Section 3081.4. On expiration of the lien as a result of
5 commencement of the work of improvement, the design professional may obtain a lien under
6 Section 7400 (mechanics lien). See Section 7308 (mechanics lien right not affected).

7 See also Sections 7010 (“design professional” defined), 7024 (“lien” defined), 7028 (“owner”
8 defined), 7046 (“work of improvement” defined).

9 **§ 7306. Enforcement of lien**

10 7306. A lien created under this chapter is enforceable under Article 7
11 (commencing with Section 7460) of Chapter 4.

12 **Comment.** Section 7306 restates former Section 3081.5.

13 See also Section 7024 (“lien” defined).

14 **§ 7308. Mechanics lien right not affected**

15 7308. This chapter does not affect the ability of a design professional to obtain a
16 lien for a work of improvement under Section 7400.

17 **Comment.** Section 7308 restates former Section 3081.6.

18 See also Sections 7010 (“design professional” defined), 7024 (“lien” defined), 7046 (“work of
19 improvement” defined).

20 **§ 7310. Time for claim of lien**

21 7310. A design professional shall record a claim of lien under this chapter no
22 later than 90 days after the design professional knows or has reason to know that
23 the work of improvement will not be commenced.

24 **Comment.** Section 7310 restates former Section 3081.7.

25 See also Sections 7010 (“design professional” defined), 7024 (“lien” defined), 7028 (“owner”
26 defined), 7046 (“work of improvement” defined).

27 **§ 7312. Right to pursue other remedies**

28 7312. The creation of a lien under this chapter does not affect the ability of the
29 design professional to pursue other remedies.

30 **Comment.** Section 7312 restates former Section 3081.8.

31 See also Sections 7010 (“design professional” defined), 7024 (“lien” defined).

32 **§ 7314. Priorities**

33 7314. (a) No lien created under this chapter affects or takes priority over the
34 interest of record of a purchaser, lessee, or encumbrancer, if the interest of the
35 purchaser, lessee, or encumbrancer in the property was duly recorded before
36 recordation of the claim of lien.

37 (b) No lien created under this chapter affects or takes priority over an
38 encumbrance of a construction lender that funds the loan for the work of
39 improvement for which the design professional provided services.

40 **Comment.** Section 7314 restates former Section 3081.9.

1 See also Sections 7004 (“construction lender” defined), 3083.024 (“design professional”
2 defined), 7024 (“lien” defined), 7028 (“owner” defined), (“work of improvement” defined).

3 **§ 7316. Exemption**

4 7316. A design professional may not obtain a lien under this chapter for services
5 provided for a work of improvement relating to a single-family owner occupied
6 residence for which the expected construction cost is less than one hundred
7 thousand dollars (\$100,000).

8 **Comment.** Section 7316 restates former Section 3081.10. The exemption is based on expected
9 construction cost, since the lien is only available if the work of improvement is not constructed.
10 See Section 7304 (creation, expiration, and release of lien).

11 See also Sections 7008 (“contract price” defined), 3083.024 (“design professional” defined),
12 7024 (“lien” defined), 7028 (“owner” defined), 7046 (“work of improvement” defined).

13 **CHAPTER 4. MECHANICS LIEN**

14 **Article 1. Who Is Entitled to Lien**

15 **§ 7400. Persons entitled to lien**

16 7400. A person that provides labor, service, equipment, or material authorized
17 for a work of improvement, including but not limited the following persons, has a
18 lien right under this chapter:

- 19 (a) Direct contractor.
- 20 (b) Subcontractor.
- 21 (c) Material supplier.
- 22 (d) Equipment lessor.
- 23 (e) Laborer.
- 24 (f) Design professional.
- 25 (g) Builder.

26 **Comment.** Section 7400 supersedes the part of former Section 3110 providing a lien for
27 contributions to a work of improvement. It implements the directive of Article XIV, Section 3, of
28 the California Constitution that, “Mechanics, persons furnishing materials, artisans, and laborers
29 of every class, shall have a lien upon the property upon which they have bestowed labor or
30 furnished material for the value of such labor done and material furnished; and the Legislature
31 shall provide, by law, for the speedy and efficient enforcement of such liens.”

32 The reference in the introductory portion of Section 7400 to labor, service, equipment, or
33 material “authorized” replaces the references in former Section 3110 to the “instance or request of
34 the owner (or any other person acting by his authority or under him, as contractor or otherwise).”
35 See Section 7406 (who may authorize work).

36 The type of contribution to the work of improvement that qualifies for a lien right is described
37 in the introductory portion of Section 7400 as provision of “labor, service, equipment, or
38 material.” Elimination of the former references to “bestowing skill or other necessary services” or
39 “furnishing appliances, teams, or power” or “work done or materials furnished” is not a
40 substantive change. See Section 7016 (“labor, service, equipment, or material” defined).

41 The listing of classes of persons with lien rights in subdivisions (a)-(g) restates without
42 substantive change the comparable part of former Section 3110. This provision does not continue
43 the former listing of types of contractors, subcontractors, laborers, and design professionals, such

1 as mechanics, artisans, machinists, builders, teamsters, draymen, architects, registered engineers,
2 and licensed land surveyors. This is not a substantive change; these classes are included in the
3 defined terms used in this section.

4 See also Sections 7010 (“design professional” defined), 7012 (“direct contractor” defined),
5 7016 (“labor, service, equipment, or material” defined), 7018 (“laborer” defined), 7024 (“lien”
6 defined), 7026 (“material supplier” defined), 7032 (“person” defined), 7044 (“subcontractor”
7 defined), 7046 (“work of improvement” defined).

8 **§ 7402. Lien right of express trust fund**

9 7402. An express trust fund has the same lien right under this chapter as a
10 laborer on a work of improvement, to the extent of the compensation agreed to be
11 paid to the express trust fund for labor on that work of improvement only.

12 **Comment.** Section 7402 continues a portion of former Section 3111 without substantive
13 change. The duplicative description of the laborer’s lien right and other unneeded language is
14 omitted. These are technical, nonsubstantive changes.

15 See also Sections 7014 (“express trust fund” defined), 7018 (“laborer” defined), 7024 (“lien”
16 defined).

17 **§ 7404. Site improvement lien**

18 7404. A person that provides labor, service, equipment, or material authorized
19 for a site improvement has a lien right under this chapter.

20 **Comment.** Section 7404 supersedes former Section 3112. The reference to work done or
21 material furnished is superseded by the reference to labor, service, equipment, or material. See
22 Section 7016 (“labor, service, equipment, or material” defined). The reference to work at the
23 instance or request of the owner or any person acting by or under authority of the owner as
24 contractor or otherwise is replaced by the reference to work authorized. See Section 7406 (who
25 may authorize work).

26 A site improvement is treated in the same manner as a work of improvement under this
27 chapter, except as provided in Sections 7448 (claim against separate residential units), 7450
28 (priority of lien), 7458 (priority of site improvement lien). See also Section 7046 (“work of
29 improvement” defined).

30 See also Sections 7024 (“lien” defined), 7032 (“person” defined), 7040 (“site improvement”
31 defined).

32 **§ 7406. Who may authorize work**

33 7406. Labor, service, equipment, or material is authorized for a work of
34 improvement or for a site improvement in any of the following circumstances:

35 (a) It is provided at the request of or agreed to by the owner.

36 (b) It is provided or authorized by a direct contractor, subcontractor, architect,
37 project manager, or other person having charge of all or part of the work of
38 improvement or site improvement.

39 **Comment.** Section 7406 restates parts of former Sections 3110 and 3112.

40 The reference to work provided at the request of an owner in subdivision (a) includes work
41 provided at the instance of the owner, or of a person acting by or under the owner’s authority. See
42 Section 7028 (“owner” defined).

43 The inclusion of project managers in subdivision (b) is new.

44 The references in former law to sub-subcontractors and builders are omitted as surplus. A
45 contractor either has a contract with the owner (direct contractor) or does not (subcontractor).
46 This part does not distinguish among levels of subcontractor. The term “builder” was not defined

1 in former law and was used only in former Section 3110. A work of improvement includes a site
2 improvement. See Section 7046 (“work of improvement” defined).

3 See also Sections 7012 (“direct contractor” defined), 7016 (“labor, service, equipment, or
4 material” defined), 7032 (“person” defined), 7044 (“subcontractor” defined).

5 Article 2. Conditions to Enforcing a Lien

6 § 7410. Preliminary notice required

7 7410. A claimant may enforce a lien only if the claimant has given preliminary
8 notice to the extent required by Chapter 2 (commencing with Section 7200) and
9 made proof of notice.

10 **Comment.** Section 7410 continues former Section 3114 without substantive change. A
11 claimant must give preliminary notice to the extent provided in the preliminary notice provisions
12 of this part. See Section 7200 *et seq.* Preliminary notice is not required of a direct contractor or a
13 laborer or laborers compensation fund. Section 7200(b) (preliminary notice prerequisite to
14 remedies).

15 See also Section 7116 (proof of notice).

16 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7034 (“preliminary notice”
17 defined).

18 § 7412. Time for claim of lien by direct contractor

19 7412. A direct contractor may not enforce a lien unless the contractor records a
20 claim of lien within the following times:

21 (a) After the contractor completes the contract.

22 (b) Before the earlier of the following times:

23 (1) Ninety days after completion of the work of improvement.

24 (2) Sixty days after the owner records a notice of completion.

25 **Comment.** Section 7412 restates former Section 3115. A contract is complete within the
26 meaning of this section when the contractor’s obligations under it are substantially performed,
27 excused, or otherwise discharged. See *Howard S. Wright Construction Co. v. BBIC Investors,*
28 *LLC*, 136 Cal. App. 4th 228, 38 Cal. Rptr. 3d 769 (2006).

29 For “completion” of a work of improvement, see Section 7150. For recordation of a notice of
30 completion, see Section 7152 (notice of completion). The notice of completion includes notice of
31 cessation.

32 See also Sections 7012 (“direct contractor” defined), 7024 (“lien” defined), 7028 (“owner”
33 defined), 7046 (“work of improvement” defined).

34 § 7414. Time for claim of lien by claimant other than direct contractor

35 7414. A claimant other than a direct contractor may not enforce a lien unless the
36 claimant records a claim of lien within the following times:

37 (a) After the claimant ceases to provide labor, service, equipment, or material.

38 (b) Before the earlier of the following times:

39 (1) Ninety days after completion of the work of improvement.

40 (2) Thirty days after the owner records a notice of completion.

41 **Comment.** Section 7414 restates former Section 3116. For “completion” of a work of
42 improvement, see Section 7150. For recordation of a notice of completion, see Section 7152
43 (notice of completion). The notice of completion includes notice of cessation.

1 An express trust fund may have a longer period in the case of a claim against a separate
2 residential unit. See Section 7416.

3 See also Sections 7002 (“claimant” defined), 7012 (“direct contractor” defined), 7016 (“labor,
4 service, equipment, or material” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7046
5 (“work of improvement” defined).

6 **§ 7416. Time for claim of lien on separate residential unit in condominium**

7 7416. Notwithstanding any other provision of this chapter, completion of a
8 residential structure containing multiple condominium units, together with any
9 common area, garage, or other appurtenant improvements, does not operate in any
10 manner to impair the lien right of an express trust fund under Section 7402 if the
11 claim of lien is recorded within 120 days after completion of the residential
12 structure.

13 **Comment.** Section 7416 continues the last paragraph of former Section 3131 without
14 substantive change.

15 See also Sections 7002 (“claimant” defined), 7014 (“express trust fund” defined), 7024 (“lien”
16 defined).

17 **§ 7418. Contents of claim of lien**

18 7418. A claim of lien shall be in writing, signed and verified by the claimant,
19 and shall include all of the following information:

20 (a) A statement of the claimant’s demand after deducting all just credits and
21 offsets.

22 (b) The name of the owner or reputed owner, if known.

23 (c) A general statement of the kind of labor, service, equipment, or material
24 provided by the claimant.

25 (d) The name of the person that contracted for the labor, service, equipment, or
26 material.

27 (e) A description of the site sufficient for identification.

28 (f) The claimant’s address.

29 **Comment.** Subdivisions (a)-(e) of Section 7418 continue former Section 3084 without
30 substantive change. The claim of lien may be executed by the claimant’s authorized agent. See
31 Section 7060 (agency).

32 Subdivision (d) requires the name of the person that “contracted for” the labor, service,
33 equipment, or material, rather than who “employed” the claimant. See Section 7406 (who may
34 authorize work). See also Section 7056 (filing and recording of papers).

35 Subdivision (f) is new. It implements other provisions that invoke a claimant’s address. Cf.
36 Sections 7428 (release bond), 7486 (notice of hearing).

37 See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material”
38 defined), 7024 (“lien” defined), 7028 (“owner” defined), 7032 (“person” defined), 7038 (“site”
39 defined).

40 **§ 7420. Notice of intended recording of claim of lien**

41 7420. (a) Before recording a claim of lien, the claimant shall give notice of the
42 intended recording to the owner or reputed owner of property subject to the claim
43 of lien.

1 (b) Notice of the intended recording of a claim of lien shall include a copy of the
2 claim of lien and a statement of the date and place where the claim of lien is to be
3 recorded.

4 **Comment.** Section 7420 is new. A claim of lien may not be recorded unless accompanied by
5 proof of notice to the owner. Section 7422 (notice prerequisite to recording claim of lien).

6 See also Sections 7100-7116 (notice).

7 **§ 7422. Notice prerequisite to recording claim of lien**

8 7422. The county recorder shall not record a claim of lien that is filed for record
9 unless accompanied by the claimant's proof of notice showing compliance with
10 Section 7420.

11 **Comment.** Section 7422 is new. Cf. Gov't Code § 27297.5 (notification by county recorder of
12 person against which involuntary lien is recorded). See also Section 7116 (proof of notice).

13 **§ 7424. Forfeiture of lien for false claim**

14 7424. (a) Except as provided in subdivision (b), erroneous information contained
15 in a claim of lien relating to the claimant's demand, credits and offsets deducted,
16 the labor, service, equipment, or material provided, or the description of the site,
17 does not invalidate the claim of lien.

18 (b) Erroneous information contained in a claim of lien relating to the claimant's
19 demand, credits and offsets deducted, or the labor, service, equipment, or material
20 provided, invalidates the claim of lien if the court determines either of the
21 following:

22 (1) The claim of lien was made with intent to slander title or defraud.

23 (2) An innocent third party, without notice, actual or constructive, became the
24 bona fide owner of the property after recordation of the claim of lien, and the
25 claim of lien was so deficient that it did not put the party on further inquiry in any
26 manner.

27 **Comment.** Section 7424 combines former Sections 3118 and 3261. The terminology of the
28 combined provision is conformed to Section 7418 (claim of lien).

29 Subdivision (b)(1) expands the bases for invalidity to include intent to slander title. If the court
30 finds intent to slander (i.e., falsely disparage) title or defraud, common law damages are
31 available. See Section 7426 (damages for false claim of lien).

32 See also Sections 7002 ("claimant" defined), 7016 ("labor, service, equipment, or material"
33 defined), 7024 ("lien" defined), 7028 ("owner" defined), 7038 ("site" defined).

34 **§ 7426. Damages for false claim of lien**

35 7426. (a) If a claimant records a claim of lien containing erroneous information
36 with intent to slander title or defraud, the claimant is liable for damages caused by
37 the recordation, including costs and a reasonable attorney's fee incurred in a
38 proceeding to invalidate the claim of lien and recover damages.

39 (b) An owner may not commence an action for damages under this section
40 unless at least 10 days before commencement the owner gave the claimant notice
41 demanding that the claimant execute and record a verified release of the claim of

1 lien and the claimant failed to do so. A demand given under Section 7482 satisfies
2 the requirement of this subdivision.

3 (c) The owner has the burden of proof of all elements of an action for damages
4 under this section.

5 **Comment.** Section 7426 is new. It reverses case law to the effect that recordation of a claim of
6 mechanics lien is privileged. See, e.g., *Pisano & Associates v. Hyman*, 29 Cal. App. 3d 1, 105
7 Cal. Rptr. 414 (1972). See also Section 7482 (demand prerequisite to petition).

8 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7028 (“owner” defined).

9 **§ 7428. Release bond**

10 7428. (a) An owner of property subject to a recorded claim of lien or a direct
11 contractor or subcontractor affected by the claim of lien that disputes the
12 correctness or validity of the claim may obtain release of the property from the
13 claim of lien by recording a lien release bond. The principal on the bond may be
14 the owner of the property or the contractor or subcontractor.

15 (b) The bond shall be conditioned on payment of any judgment and costs the
16 claimant recovers on the lien. The bond shall be in an amount equal to 125 percent
17 of the amount of the claim of lien or 125 percent of the amount allocated in the
18 claim of lien to the property to be released. The bond shall be executed by an
19 admitted surety insurer.

20 (c) The bond may be recorded either before or after commencement of an action
21 to enforce the lien. On recordation of the bond the property is released from the
22 claim of lien and from any action to enforce the lien.

23 (d) A person that obtains and records a lien release bond shall give notice to the
24 claimant by mailing a copy of the bond to the claimant. Failure to give the notice
25 required by this section does not affect the validity of the bond, but the statute of
26 limitations for an action on the bond is tolled until notice is given. The claimant
27 shall commence an action on the bond within six months after notice is given.

28 **Comment.** Subdivisions (a)-(c) of Section 7428 continue former Section 3143. The amount of
29 the release bond is reduced to 125 percent of the amount of the claim of lien, consistent with the
30 stop payment notice release bond. See Section 7510 (release bond). The language of the section is
31 harmonized with the Bond and Undertaking Law, Chapter 2 (commencing with Section 995.010)
32 of Title 14 of Part 2 of the Code of Civil Procedure.

33 Subdivision (d) restates former Section 3144.5. See also Sections 7100-7116 (notice).

34 The owner of an interest in property may obtain a release bond. See Section 7028 (“owner”
35 defined). The reference to recordation of the bond in the county in which the claim of lien is
36 recorded is omitted as unnecessary. Both the claim of lien and the bond are recorded in the office
37 of the county recorder of the county in which the work of improvement or part of it is situated.
38 Section 7056 (filing and recording of papers).

39 See also Sections 7002 (“claimant” defined), 7012 (“direct contractor” defined), 7024 (“lien”
40 defined), 7032 (“person” defined), 7044 (“subcontractor” defined).

41 **Article 3. Amount of Lien**

42 **§ 7430. Amount of lien**

43 7430. (a) The lien is a direct lien for the lesser of the following amounts:

1 (1) The reasonable value of the labor, service, equipment, and material provided
2 by the claimant.

3 (2) The price agreed to by the claimant and the person that contracted for the
4 labor, service, equipment, or material. The lien is not limited in amount by the
5 contract price for the work of improvement except as provided in Section 7602.

6 (b) This section does not preclude the claimant from including in a claim of lien
7 an amount due as a result of rescission, abandonment, or breach of the contract. If
8 there is a rescission, abandonment, or breach of the contract, the amount of the
9 lien may not exceed the reasonable value of the labor, service, equipment, or
10 material provided by the claimant.

11 **Comment.** Section 7430 restates subdivisions (a) and (b) of former Section 3123 and a portion
12 of former Section 3110. See also Sections 7008 (“contract price” defined) and 7602 (payment
13 bond). As used in this section, the reasonable value of labor, service, equipment, and material
14 includes the reasonable use value of appliances, equipment, teams, and power.

15 The provision of former Section 3123(c) that required an owner to give notice of a change of 5
16 percent or more is not continued.

17 See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material”
18 defined), 7024 (“lien” defined), 7032 (“person” defined), Section 7418 (claim of lien).

19 **Note.** This draft omits from the law the provision of former Section 3123(c) that required an
20 owner to give notice of a change of 5 percent or more. This provision did not appear to have an
21 effective enforcement mechanism. **The Commission particularly solicits comment on this**
22 **proposed change.**

23 § 7432. Lien limited to work included in contract or modification

24 7432. (a) A lien does not extend to labor, service, equipment, or material not
25 included in a contract between the owner and direct contractor if the labor, service,
26 equipment, or material was authorized by the direct contractor or subcontractor
27 and the claimant had actual knowledge or constructive notice of the contract
28 before providing the labor, service, equipment, or material.

29 (b) The filing of a contract with the county recorder, before the commencement
30 of work, is equivalent to giving actual notice of the provisions of the contract by
31 the owner to a person providing labor, service, equipment, or material.

32 **Comment.** Section 7432 restates former Section 3124 without substantive change. “Direct
33 contractor” is substituted for the undefined “contractor” in subdivision (a). The concept of
34 “authorized” is substituted for “employed” in subdivision (a). See Section 7406 (who may
35 authorize work). The reference to a modification of the contract is omitted in reliance of the
36 definition of “contract”, which includes a contract change. See Section 7006 (“contract” defined).

37 See also Sections 7002 (“claimant” defined), 7012 (“direct contractor” defined), 7016 (“labor,
38 service, equipment, or material” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7032
39 (“person” defined), 7044 (“subcontractor” defined).

40 § 7434. Amount of recovery

41 7434. A direct contractor or a subcontractor may enforce a lien only for the
42 amount due pursuant to the contract after deducting all claims of other claimants
43 for labor, service, equipment, and material provided and embraced within the
44 contract.

1 (2) The name of a purchaser under contract, if any, or lessee, if known.

2 (3) A statement that the person giving the notice is not responsible for claims
3 arising from the work of improvement.

4 (c) A notice of nonresponsibility is not effective unless, within 10 days after the
5 person giving notice has knowledge of the work of improvement, the person both
6 posts and records the notice.

7 **Comment.** Section 7444 restates former Section 3094 without substantive change. See also
8 Sections 7100-7116 (notice). The information required in this notice is in addition to the
9 information required by Section 7102 (contents of notice). The notice of nonresponsibility may be
10 signed and verified by the owner or person owning or claiming an interest in the property, or by
11 the owner or other person's agent. See Section 7028 ("owner" defined). A notice of
12 nonresponsibility is recorded in the office of the county recorder of the county in which the work
13 of improvement or part of it is situated. Section 7056 (filing and recording of papers).

14 See also Sections 7032 ("person" defined), 7038 ("site" defined), 7046 ("work of
15 improvement" defined).

16 **§ 7446. Multiple works of improvement**

17 7446. A claimant may record one claim of lien on two or more works of
18 improvement, subject to the following conditions:

19 (a) The works of improvement have or are reputed to have the same owner, or
20 the labor, service, equipment, or material was contracted for by the same person
21 for the works of improvement whether or not they have the same owner.

22 (b) The claimant in the claim of lien designates the amount due for each work of
23 improvement. If the claimant contracted for a lump sum payment for labor,
24 service, equipment, and material provided for the works of improvement and the
25 contract does not segregate the amount due for each work of improvement
26 separately, the claimant may estimate an equitable distribution of the amount due
27 for each work of improvement based on the proportionate amount of labor,
28 service, equipment, or material provided for each. If the claimant does not
29 designate the amount due for each work of improvement, the lien is subordinate to
30 other liens.

31 (c) If there is a single structure on property of different owners, the claimant
32 need not segregate the proportion of labor, service, equipment, or material
33 provided for the portion of the structure situated on property of each owner. In the
34 lien enforcement action the court may, if it determines it equitable to do so,
35 designate an equitable distribution of the lien among the property of the owners.

36 (d) The lien does not extend beyond the amount designated as against other
37 creditors having liens, by judgment, mortgage, or otherwise, on either the works of
38 improvement or the property on which the works of improvement are situated.

39 **Comment.** Section 7446 restates former Section 3130 without substantive change. The concept
40 of "contracted for" is substituted for "employed" in subdivisions (a) and (b). See Section 7406
41 (who may authorize work).

42 Subdivision (c) is intended to apply to a single work of improvement situated on two or more
43 parcels of land that have distinct owners.

1 See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material”
2 defined), 7024 (“lien” defined), 7028 (“owner” defined), 7032 (“person” defined), 7046 (“work
3 of improvement” defined).

4 **§ 7448. Claim against separate residential units**

5 7448. (a) As used in this section, “separate residential unit” means one
6 residential structure, including a residential structure containing multiple
7 condominium units, together with any common area, garage, or other appurtenant
8 improvements.

9 (b) If a work of improvement consists of the construction of two or more
10 separate residential units:

11 (1) Each unit is deemed a separate work of improvement, and completion of
12 each unit is determined separately for purposes of the time for recording a claim of
13 lien on that unit. This paragraph does not affect any lien right under Section 7404
14 or 7446.

15 (2) Material provided for the work of improvement is deemed to be provided for
16 use or consumption in each separate residential unit in which the material is
17 actually used or consumed; but if the claimant is unable to segregate the amounts
18 used or consumed in separate residential units, the claimant has the right to all the
19 benefits of Section 7446.

20 **Comment.** Section 7448 restates the first paragraph of former Section 3131 without
21 substantive change. The reference to “filing” a claim of lien is changed to recording. See Sections
22 7412, 7414 (recordation of claim of lien). For the purpose of this section, a claim of lien is not
23 considered recorded unless done in the manner provided by Section 7056 (filing and recording of
24 papers). See also Sections 7404 (site improvement lien) and 7446 (multiple works of
25 improvement).

26 The second paragraph of former Section 3131 is continued in Section 7416 (special rule for
27 express trust fund claim on separate residential unit in condominium).

28 For “completion” of a work of improvement, see Section 7150.

29 See also Sections 7418 (claim of lien), 7002 (“claimant” defined), 7024 (“lien” defined), 7046
30 (“work of improvement” defined).

31 **Article 5. Priorities**

32 **§ 7450. Priority of lien**

33 7450. (a) A lien under this chapter, other than a lien provided for in Section
34 7404, has priority over a lien, mortgage, deed of trust, or other encumbrance on
35 the work of improvement or the property on which the work of improvement is
36 situated, that (1) attaches after commencement of the work of improvement, or (2)
37 was unrecorded at the commencement of the work of improvement and of which
38 the claimant had no notice.

39 (b) Subdivision (a) is subject to the exception provided for in Section 7452.

40 **Comment.** Section 7450 continues former Section 3134 without substantive change. For a site
41 improvement lien, see Section 7458 (priority of site improvement lien). See also Sections 7404
42 (site improvement lien), 7452 (payment bond).

1 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7040 (“site improvement”
2 defined), 7046 (“work of improvement” defined).

3 **§ 7452. Payment bond covering mechanics lien**

4 7452. A mortgage or deed of trust, otherwise subordinate to a lien under Section
5 7450, has priority over a lien for labor, service, equipment, or material provided
6 after recordation of a payment bond that satisfies all of the following
7 requirements:

8 (a) The bond refers to the mortgage or deed of trust.

9 (b) The bond is in an amount not less than 75 percent of the principal amount of
10 the mortgage or deed of trust.

11 **Comment.** Section 7452 continues former Section 3138 without substantive change. See also
12 Section 7056 (recordation of payment bond in county in which work of improvement is situated).

13 See also Sections 7016 (“labor, service, equipment, or material” defined), 7024 (“lien”
14 defined), 7030 (“payment bond” defined).

15 **§ 7454. Separate contract for site improvement**

16 7454. If a site improvement is provided for in a contract separate from the
17 contract for the remainder of the work of improvement, the site improvement is
18 deemed a separate work of improvement and commencement of the site
19 improvement is not commencement of the remainder of the work of improvement.

20 **Comment.** Section 7454 restates former Section 3135 without substantive change.

21 See also Sections 7040 (“site improvement” defined), 7046 (“work of improvement” defined).

22 **§ 7456. Priority of advances by lender**

23 7456. (a) This section applies to a construction loan secured by a mortgage or
24 deed of trust that has priority over a lien under this chapter.

25 (b) An optional advance of funds by the construction lender that is used for
26 construction costs has the same priority as a mandatory advance of funds by the
27 construction lender, provided that the total of all advances does not exceed the
28 amount of the original construction loan.

29 **Comment.** Section 7456 rewrites former Section 3136 for clarity.

30 See also Sections 7004 (“construction lender” defined), 7024 (“lien” defined).

31 **Note.** The Commission solicits comment on the fidelity of the rewrite to the original meaning
32 of the section. The interpretation taken in this rewrite is consistent with that of 5 Miller & Starr,
33 California Real Estate § 11:132, at 334-35 (3d ed. 2001) (completion of construction by lender).

34 **§ 7458. Priority of site improvement lien**

35 7458. (a) Except as provided in subdivision (b), a lien provided for in Section
36 7404 has priority over:

37 (1) A mortgage, deed of trust, or other encumbrance that attaches after
38 commencement of the site improvement.

39 (2) A mortgage, deed of trust, or other encumbrance that was unrecorded at the
40 commencement of the site improvement and of which the claimant had no notice.

1 (3) A mortgage, deed of trust, or other encumbrance that was recorded before
2 commencement of the site improvement, if given for the sole or primary purpose
3 of financing the site improvement. This subdivision does not apply if the loan
4 proceeds are, in good faith, placed in the control of the lender pursuant to a
5 binding agreement with the borrower to the effect that (i) the proceeds are to be
6 applied to the payment of claimants and (ii) no portion of the proceeds will be paid
7 to the borrower in the absence of satisfactory evidence that all claims have been
8 paid or that the time for recording a claim of lien has expired and no claim of lien
9 has been recorded.

10 (b) A mortgage or deed of trust, otherwise subordinate under subdivision (a), has
11 priority over a lien provided for in Section 7404 if a payment bond in an amount
12 not less than 50 percent of the principal amount of the mortgage or deed of trust is
13 recorded before completion of the work of improvement.

14 **Comment.** Subdivision (a) of Section 7458 continues former Section 3137 without substantive
15 change. See also Section 7404 (site improvement lien).

16 Subdivision (b) continues former Section 3139 without substantive change. See also Section
17 7056 (filing and recording of papers).

18 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7030 (“payment bond”
19 defined), 7040 (“site improvement” defined), 7046 (“work of improvement” defined).

20 Article 6. Enforcement of Lien

21 § 7460. Time for commencement of enforcement action

22 7460. (a) The claimant shall commence an action to enforce a lien within 90
23 days after recordation of the claim of lien and record a notice of the pendency of
24 the action within 100 days after recordation of the claim of lien. If the claimant
25 does not commence an action and record notice of the pendency of the action
26 within the time provided in this subdivision, the claim of lien expires and is
27 unenforceable.

28 (b) Subdivision (a) does not apply if the claimant and owner agree to extend
29 credit, and notice of the fact and terms of the extension of credit is recorded (1)
30 within 90 days after recordation of the claim of lien or (2) more than 90 days after
31 recordation of the claim of lien but before a purchaser or encumbrancer for value
32 and in good faith acquires rights in the property. In that event the claimant shall
33 commence an action to enforce the lien and record a notice of the pendency of the
34 action within 90 days after the expiration of the credit, but in no case later than
35 one year after completion of the work of improvement. If the claimant does not
36 commence an action and record notice of the pendency of the action within the
37 time provided in this subdivision, the claim of lien expires and is unenforceable.

38 **Comment.** Section 7460 restates former Sections 3144 and 3145, and adds the requirement
39 that a claim of lien is unenforceable if a *lis pendens* is not recorded within the statutory periods.

40 Subdivision (b) makes clear that the owner must be a party to the extension of credit, and
41 allows for late recording of the extension of credit. This codifies the rule in *Richards v. Hillside*
42 *Development Co.*, 177 Cal. App. 2d 776, 2 Cal. Rptr. 693 (1960), and overrules *Dorer v.*
43 *McKinsey*, 188 Cal. App. 2d 199, 10 Cal. Rptr. 287 (1961).

1 For completion of a work of improvement, see Section 7150.
2 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7046 (“work of
3 improvement” defined).

4 **§ 7464. Lis pendens**

5 7464. After commencement of an action to enforce a lien, the claimant may
6 record a notice of the pendency of action under Title 4.5 (commencing with
7 Section 405) of Part 2 of the Code of Civil Procedure.

8 **Comment.** Section 7464 restates former Section 3146 without substantive change. The
9 reference to the lis pendens statute is corrected, to reflect the repeal of Code of Civil Procedure
10 409. See 1992 Cal. Stat. ch. 883, § 1. See also Section 7054 (rules of practice).

11 The second sentence of former Section 3146 is not continued. It is superseded by general
12 provisions governing the effect of a lis pendens. See Code Civ. Proc. § 405.24 (constructive
13 notice).

14 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined).

15 **§ 7466. Dismissal for lack of prosecution**

16 7466. Notwithstanding Section 583.420 of the Code of Civil Procedure, the
17 court may dismiss an action to enforce a lien that is not brought to trial within two
18 years after commencement.

19 **Comment.** Section 7466 continues former Section 3147 without substantive change. The
20 cross-reference to the Code of Civil Procedure is added to make clear that this section modifies
21 the general three-year period for discretionary dismissal. See also Section 7054 (rules of
22 practice).

23 See also Section 7024 (“lien” defined).

24 **§ 7470. Costs**

25 7470. In addition to any other costs allowed by law, the court in an action to
26 enforce a lien shall allow as costs to each claimant whose lien is established the
27 amount paid to verify and record the claim of lien, whether the claimant is a
28 plaintiff or defendant.

29 **Comment.** Section 7470 continues former Section 3150 without substantive change.

30 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined).

31 **§ 7472. Deficiency**

32 7472. If there is a deficiency of proceeds from the sale of property on a
33 judgment for enforcement of a lien, a deficiency judgment may be entered against
34 a party personally liable for the deficiency in the same manner and with the same
35 effect as in an action to foreclose a mortgage.

36 **Comment.** Section 7472 restates former Section 3151 without substantive change.

37 See also Section 7024 (“lien” defined).

38 **§ 7474. Personal liability**

39 7474. (a) This chapter does not affect any of the following rights of a claimant:

40 (1) The right to maintain a personal action to recover a debt against the person
41 liable, either in a separate action or in an action to enforce a lien.

1 (2) The right to a writ of attachment. In an application for a writ of attachment,
2 the claimant shall refer to this section. The claimant's recording of a claim of lien
3 does not affect the right to a writ of attachment.

4 (3) The right to enforce a judgment.

5 (b) A judgment obtained by the claimant in a personal action described in
6 subdivision (a) does not impair or merge the claim of lien, but any amount
7 collected on the judgment shall be credited on the amount of the lien.

8 **Comment.** Section 7474 restates former Section 3152 without substantive change. The
9 reference in the introductory portion of the section to "this title" is changed to "this chapter"
10 consistent with the scope of the chapter.

11 For provisions relating to attachment, see Code Civ. Proc. § 481.010 *et seq.* For provisions
12 relating to enforcement of a money judgment, see Code Civ. Proc. § 681.010 *et seq.*

13 See also Sections 7002 ("claimant" defined), 7024 ("lien" defined), 7032 ("person" defined).

14 **§ 7476. Liability of contractor for lien enforcement**

15 7476. In an action to enforce a lien for labor, service, equipment, or material
16 provided to a contractor:

17 (a) The contractor shall defend the action at the contractor's own expense.
18 During the pendency of the action the owner may withhold from the direct
19 contractor the amount claimed in the action.

20 (b) If the judgment in the action is against the owner or the owner's property, the
21 owner may deduct the amount of the judgment and costs from any amount owed to
22 the direct contractor. If the amount of the judgment and costs exceeds the amount
23 owed to the direct contractor, or if the owner has settled with the direct contractor
24 in full, the owner may recover from the contractor, or the sureties on a bond given
25 by the contractor for faithful performance of the contract, the amount of the
26 judgment and costs that exceed the contract price and for which the contractor was
27 originally liable.

28 **Comment.** Section 7476 restates former Section 3153 without substantive change.

29 See also Sections 7008 ("contract price" defined), 7016 ("labor, service, equipment, or
30 material" defined), 7024 ("lien" defined), 7012 ("direct contractor" defined), 7028 ("owner"
31 defined).

32 **Article 7. Release Order**

33 **§ 7480. Petition for release order**

34 7480. (a) The owner of property subject to a claim of lien may petition the court
35 for an order to release the property from the claim of lien for any of the following
36 causes:

37 (1) The claimant has not commenced an action to enforce the lien within the
38 time provided in Section 7460.

39 (2) The claim of lien is invalid under Section 7424.

40 (3) The claimant's demand stated in the claim of lien has been paid in full.

1 (4) None of the labor, service, equipment, or material stated in the claim of lien
2 has been provided.

3 (5) The claimant was not licensed to provide the labor, service, equipment, or
4 material stated in the claim of lien for which a license was required by statute.

5 (6) There is a final judgment in another proceeding that the petitioner is not
6 indebted to the claimant for the demand on which the claim of lien is based.

7 (b) This article does not bar any other cause of action or claim for relief by the
8 owner of the property, nor does a release order bar any other cause of action or
9 claim for relief by the claimant, other than an action to enforce the claim of lien
10 that is the subject of the release order. However, another action or claim for relief
11 may not be joined with a petition under this article.

12 (c) Notwithstanding Section 7054, Chapter 2.5 (commencing with Section
13 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure does not apply to a
14 proceeding under this article.

15 **Comment.** Subdivision (a)(1) of Section 7480 continues former Section 3154(a) without
16 substantive change. Subdivisions (a)(2)-(6) are new. The owner need not wait until expiration of
17 the time to commence an enforcement action before bringing a petition to release an invalid claim
18 of lien under this section. Cf. Section 7424 (forfeiture of lien for false claim).

19 Subdivision (b) continues former Section 3154(h) without substantive change, and codifies the
20 holding in *Solit v. Tokai Bank, Ltd. New York Branch*, 68 Cal. App. 4th 1435, 81 Cal. Rptr. 2d
21 243 (1999). Subdivision (c) continues former Section 3154(i) without substantive change. As
22 used in this section, the owner of property includes the owner of an interest in the property. See
23 Section 7028 (“owner” defined).

24 See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material”
25 defined), 7024 (“lien” defined).

26 **§ 7482. Demand prerequisite to petition**

27 7482. An owner of property may not petition the court for a release order under
28 this article unless at least 10 days before filing the petition the owner gives the
29 claimant notice demanding that the claimant execute and record a release of the
30 claim of lien.

31 **Comment.** Section 7482 is new. If the lien claimant complies with the demand, a release
32 proceeding is unnecessary.

33 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7028 (“owner” defined).

34 **§ 7484. Contents of petition**

35 7484. A petition for a release order shall be verified and shall allege all of the
36 following:

37 (a) The date of recordation of the claim of lien. A certified copy of the claim of
38 lien shall be attached to the petition.

39 (b) The county in which the claim of lien is recorded.

40 (c) The book and page or series number of the place in the official records where
41 the claim of lien is recorded.

42 (d) The legal description of the property subject to the claim of lien.

1 (e) The facts on which the petition is based. If the petition is based on expiration
2 of the time to enforce the lien, the petition shall allege that no extension of credit
3 has been recorded within the time required by Section 7460, that the time for
4 commencement of an action to enforce the lien has expired.

5 (f) That the owner has given the claimant notice demanding that the claimant
6 execute and record a release of the lien and that the claimant is unable or unwilling
7 to do so or cannot with reasonable diligence be found.

8 (g) Whether an action to enforce the lien is pending.

9 (h) Whether the owner has filed for relief in bankruptcy or there is another
10 restraint that prevents the claimant from commencing an action to enforce the lien.

11 **Comment.** Section 7484 supersedes subdivision (b) of former Section 3154. As used in this
12 section, the owner of property includes the owner of an interest in the property. See Section 7028
13 (“owner” defined). See also Section 7100 (written notice).

14 The information included in the petition is intended to facilitate the court’s order under Section
15 7488 (hearing and order). The reference to series number is added to cover a county in which the
16 recorder uses a sequence number for record location.

17 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined).

18 **§ 7486. Time of hearing**

19 7486. (a) On the filing of a petition for a release order, the clerk shall set a
20 hearing date. The date shall be not more than 30 days after the filing of the
21 petition. The court may continue the hearing beyond the 30-day period on a
22 showing of good cause, but in any event the court shall rule and make any
23 necessary orders on the petition not later than 75 days after the filing of the
24 petition.

25 (b) The petitioner shall serve a copy of the petition and notice of hearing on the
26 claimant at least 10 days before the hearing. Service shall be made in the same
27 manner as service of summons, or by mail addressed to the claimant.

28 (c) Notwithstanding Section 7114, when service is made by mail, service is
29 complete on the fifth day following deposit of the petition and notice in the mail.

30 **Comment.** Section 7486 continues subdivisions (c), (d), and the first sentence of (e) of former
31 Section 3154, with the addition of the requirement that the court act no later than 75 days after the
32 petition is filed. The reference to “if there is no clerk, the judge” is deleted. All courts now have a
33 clerk. See also Section 7052 (proper court).

34 See also Sections 7100-7116 (notice).

35 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7034 (“preliminary notice”
36 defined).

37 **§ 7488. Hearing and order**

38 7488. (a) At the hearing both (i) the petition and (ii) the issue of compliance
39 with the service and date for hearing requirements of this article are deemed
40 controverted by the claimant, and the petitioner has the burden of proof on those
41 matters.

42 (b) If judgment is in favor of the petitioner, the court shall order the property
43 released from the claim of lien.

1 (c) The prevailing party is entitled to a reasonable attorney's fee.

2 **Comment.** Subdivision (a) of Section 7488 continues the last sentence of former Section
3 3154(b)(5) and the last two sentences of former Section 3154(e) without substantive change.
4 Subdivision (b) continues a portion of former Section 3154(f); the remainder of the former
5 provision is continued in Article 8 (commencing with Section 7490) (removal of claim of lien
6 from record). Subdivision (c) continues former Section 3154(g) with the exception of the \$2,000
7 limitation.

8 See also Sections 7002 ("claimant" defined), 7024 ("lien" defined).

9 Article 8. Removal of Claim of Lien from Record

10 § 7490. Court order

11 7490. (a) A court order dismissing an action to enforce a lien or releasing
12 property from a claim of lien, or a judgment that no lien exists, shall include all of
13 the following information:

14 (1) The date of recordation of the claim of lien.

15 (2) The county in which the claim of lien is recorded.

16 (3) The book and page or series number of the place in the official records
17 where the claim of lien is recorded.

18 (4) The legal description of the property.

19 (b) A court order under this section is a recordable instrument. On recordation of
20 a certified copy of the court order, the property described in the order is released
21 from the claim of lien.

22 **Comment.** Subdivision (a) of Section 7490 generalizes a portion of former Section 3154(f).
23 The reference to sequence number is added to cover a county in which the recorder uses a series
24 number for record location. The reference to the city where the claim of lien is recorded is
25 omitted as superfluous.

26 Subdivision (b) generalizes the second sentence of former Section 3154(f)(4).

27 See also Section 7024 ("lien" defined).

28 § 7492. Effect of court order

29 7492. (a) A court order or judgment under Section 7490 is equivalent to
30 cancellation of the claim of lien and its removal from the record.

31 (b) This section does not apply to a court order dismissing an action to enforce a
32 lien that is expressly stated to be without prejudice.

33 **Comment.** Section 7492 generalizes former Section 3148.

34 See also Section 7024 ("lien" defined).

35 § 7494. Effect of expiration or recordation of court order

36 7494. If a claim of lien expires and is unenforceable under Section 7460, or if a
37 court order or judgment is recorded under Section 7490, the claim of lien does not
38 constitute actual or constructive notice of any of the matters contained, claimed,
39 alleged, or contended in the claim of lien, or create a duty of inquiry in any person
40 thereafter dealing with the affected property.

41 **Comment.** Section 7494 is drawn from Code of Civil Procedure Section 405.60 (lis pendens).

1 See also Section 7024 (“lien” defined).

2 CHAPTER 5. STOP PAYMENT NOTICE

3 Article 1. General Provisions

4 **§ 7500. Stop payment notice exclusive remedy to reach construction funds**

5 7500. (a) A person may not assert a legal or equitable right in a fund for
6 payment of construction costs, other than a right created by direct written contract
7 between the person and the holder of the fund, except as provided in this chapter.

8 (b) This chapter provides the exclusive remedy of a person that provides labor,
9 service, equipment, or material against a fund for payment of construction costs.

10 **Comment.** Section 7500 restates former Section 3264, but is limited to a private work. See
11 Section 7050 (application of part). For a comparable provision applicable to a public work, see
12 Pub. Cont. Code § 44110 (stop payment notice exclusive remedy to reach construction funds).

13 This section is not intended to either ratify or abrogate the holding of *Nibbi Brothers, Inc. v.*
14 *Home Fed. Sav. & Loan Ass’n*, 205 Cal. App. 3d 1415, 253 Cal. Rptr. 289 (1988), that in an
15 appropriate case a person providing labor or materials may recover from a construction lender on
16 a theory of unjust enrichment.

17 See also Sections 7016 (“labor, service, equipment, or material” defined), 7032 (“person”
18 defined).

19 **§ 7502. Contents of stop payment notice**

20 7502. (a) A stop payment notice shall be signed and verified by the claimant.

21 (b) The claimant may include in a stop payment notice an amount due as a result
22 of rescission, abandonment, or breach of the contract. If there is a rescission,
23 abandonment, or breach of the contract, the amount of the stop payment notice
24 may not exceed the reasonable value of the labor, service, equipment, and material
25 provided by the claimant.

26 **Comment.** Subdivision (a) of Section 7502 supersedes subdivisions (a)-(d) of former Section
27 3103. See Sections 7100-7116 (notice). A stop payment notice may be executed by the
28 claimant’s agent. See Section 7060 (agency). This section does not preclude the claimant from
29 including in a stop payment notice an amount due for labor, service, equipment, or material
30 provided pursuant to a contract change. See Section 7006 (“contract” defined).

31 Subdivision (b) applies provisions applicable to a claim of lien to the stop payment notice. Cf.
32 Section 7430 (amount of lien).

33 See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7016
34 (“labor, service, equipment, or material” defined), 7032 (“person” defined), 7042 (“stop payment
35 notice” defined).

36 **§ 7504. False stop payment notice**

37 7504. A claimant that willfully gives a false stop payment notice or that willfully
38 includes in the notice labor, service, equipment, or material not provided or agreed
39 to be provided to or for the person named in the notice forfeits all right to
40 participate in the distribution of the funds withheld and all right to a lien under
41 Chapter 4 (commencing with Section 7400).

1 **Comment.** Section 7504 restates former Section 3168 without substantive change.
2 See also Sections 7002 (“claimant” defined), Section 7016 (“labor, service, equipment, or
3 material” defined), 7024 (“lien” defined), 7032 (“person” defined), 7042 (“stop payment notice”
4 defined).

5 **§ 7506. Manner of giving stop payment notice**

6 7506. (a) A stop payment notice to an owner shall be given to the owner or to
7 the owner’s architect, if any.

8 (b) A stop payment notice to a construction lender holding construction funds
9 shall be given to the manager or other responsible officer or person at the office or
10 branch of the lender administering or holding the construction funds.

11 **Comment.** Subdivisions (a) and (b) of Section 7506 restate a portion of the second paragraph
12 of former Section 3103 and the last two sentences of former Section 3083, expanding the manner
13 of notice. See Section 7104 (manner of giving notice).

14 A notice given to a construction lender under subdivision (b) is not effective as against the
15 lender unless given as provided in that subdivision.

16 The effect of the last paragraph of former Section 3103 is continued in Section 7104 (manner
17 of giving notice).

18 See also Sections 7004 (“construction lender” defined), 7028 (“owner” defined), 7032
19 (“person” defined), 7042 (“stop payment notice” defined).

20 **§ 7508. Requirements for valid stop payment notice**

21 7508. A stop payment notice is not valid unless both of the following conditions
22 are satisfied:

23 (a) The claimant gave preliminary notice to the extent required by Chapter 2
24 (commencing with Section 7200).

25 (b) The claimant gave the stop payment notice before expiration of the time
26 within which a claim of lien must be recorded under Chapter 4 (commencing with
27 Section 7400).

28 **Comment.** Section 7508 restates former Section 3160 and a portion of the first sentence of
29 former Section 3159 without substantive change. For the time within which a claim of lien must
30 be recorded, see Sections 7412-7416 (time for claim of lien); see also Section 7154 (notice of
31 completion of contract for portion of work of improvement).

32 See also Sections 7002 (“claimant” defined), 7028 (“owner” defined), 7034 (“preliminary
33 notice” defined), 7042 (“stop payment notice” defined), 7046 (“work of improvement” defined).

34 **§ 7510. Release bond**

35 7510. (a) A person may obtain release of funds withheld pursuant to a stop
36 payment notice by giving the person withholding the funds a release bond.

37 (b) A release bond shall be given by an admitted surety insurer and shall be
38 conditioned for payment of any amount the claimant recovers on the claim,
39 together with costs of suit awarded in the action. The bond shall be in an amount
40 equal to 125 percent of the amount claimed in the stop payment notice.

41 (c) On receipt of a release bond, the person withholding funds pursuant to the
42 stop payment notice shall release them.

1 Article 3. Stop Payment Notice to Construction Lender

2 **§ 7530. Stop payment notice to construction lender**

3 7530. (a) A person that has a lien right under Chapter 4 (commencing with
4 Section 7400) may give a construction lender a stop payment notice.

5 (b) If the person that gives a construction lender a stop payment notice is a
6 claimant other than a direct contractor, the notice may only be given for labor,
7 service, equipment, or material provided by the claimant.

8 **Comment.** Subdivision (a) of Section 7530 restates a portion of the first sentence of former
9 Section 3159 without substantive change. See also Sections 7042 (“stop payment notice”
10 defined), 7508 (requirements for valid stop payment notice).

11 For provisions governing the amount withheld where the person giving a stop payment notice
12 is a direct contractor or subcontractor and there is a claim of another subcontractor or material
13 supplier, see Section 7542 (amount withheld).

14 See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7012
15 (“direct contractor” defined), Section 7016 (“labor, service, equipment, or material” defined),
16 7024 (“lien” defined), 7032 (“person” defined).

17 **§ 7532. Bonded stop payment notice**

18 7532. A claimant may give a construction lender a stop payment notice
19 accompanied by a bond in an amount equal to 125 percent of the amount of the
20 claim. The bond shall be conditioned that if the defendant recovers judgment in an
21 action to enforce payment of the claim stated in the stop payment notice or to
22 enforce a claim of lien recorded by the claimant, the claimant will pay all costs
23 that are awarded the owner, direct contractor, or construction lender, and all
24 damages to the owner, direct contractor, or construction lender that result from the
25 stop payment notice or recordation of the claim of lien, not exceeding the amount
26 of the bond.

27 **Comment.** Section 7532 restates the first sentence of former Section 3083 without substantive
28 change. The former reference to “good and sufficient sureties” on the bond is omitted as
29 unnecessary. See Code Civ. Proc. § 995.310 (sufficient sureties on bond required). The second
30 two sentences of former Section 3083 are continued in Section 7506(a)(2) (manner of giving
31 notice).

32 See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7012
33 (“direct contractor” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7042 (“stop
34 payment notice” defined).

35 **Note.** Existing law states that the claimant’s bond covers costs that may be awarded “against”
36 the defendant. This is evidently a garbled way of saying that the claimant must cover the
37 prevailing defendant’s court costs. We have revised the provision accordingly.

38 **§ 7534. Objection to bond**

39 7534. (a) A construction lender that objects to the sufficiency of sureties on the
40 bond given with a bonded stop payment notice shall give notice to the claimant of
41 the objection within 20 days after the bonded stop payment notice is given.

42 (b) The claimant may within 10 days after notice of the objection is given
43 substitute for the initial bond a bond executed by an admitted surety insurer. If the

1 claimant does not substitute a bond executed by an admitted surety insurer, the
2 construction lender may disregard the bonded stop payment notice and release all
3 funds withheld in response to that notice.

4 **Comment.** Section 7534 restates former Section 3163 without substantive change. Cf. Section
5 7100 (written notice); Code Civ. Proc. § 995.120 (“admitted surety insurer” defined).

6 See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7042 (“stop
7 payment notice” defined).

8 **§ 7536. Duty of construction lender**

9 7536. (a) Except as provided in subdivision (b), on receipt of a stop payment
10 notice a construction lender shall withhold from the borrower or other person to
11 which the lender or the owner is obligated to make payments or advancement out
12 of the construction fund sufficient funds to pay the claim.

13 (b) The construction lender may, at its option, elect not to withhold funds in any
14 of the following circumstances:

15 (1) The stop payment notice is unbonded.

16 (2) A payment bond is recorded before the lender is given the first stop payment
17 notice. This paragraph does not apply to a bonded stop payment notice given by a
18 direct contractor.

19 **Comment.** Section 7536 restates paragraphs (1) and (2) of subdivision (a) of former Section
20 3159, and subdivision (a)(1)-(2) of former Section 3162. The requirement that the lender
21 withhold sufficient funds to pay “any claim of lien that is recorded” is omitted; any amount paid
22 pursuant to a stop payment notice reduces the claim of lien. The reference to recordation of a
23 payment bond “in the office of the county recorder where the site is located” is omitted from
24 subdivision (b)(2) as unnecessary. See Section 7056 (filing and recording of papers).

25 If a bonded stop payment notice is given by a direct contractor, the construction lender must
26 withhold funds regardless of whether a payment bond has previously been recorded under Section
27 7602.

28 For provisions governing the amount withheld where the person giving a stop payment notice
29 is a direct contractor or subcontractor and there is a claim of another subcontractor or material
30 supplier, see Section 7542 (amount withheld).

31 See also Sections 7004 (“construction lender” defined), 7012 (“direct contractor” defined),
32 7024 (“lien” defined), 7028 (“owner” defined), 7030 (“payment bond” defined), 7032 (“person”
33 defined), 7042 (“stop payment notice” defined).

34  **Note.** We have radically recast this provision in an effort to simplify it. Knowledgeable
35 persons should examine the provision to ensure that we have not inadvertently changed its
36 meaning.

37 This draft deletes the provision of existing law that requires the owner to withhold an amount
38 due to pay the amount of the claim stated in the notice “and any claim of lien that is recorded.”
39 Under the draft, the amount claimed in a stop payment notice is the same as the amount in a claim
40 of lien. Any amount paid pursuant to the stop payment notice reduces the claim of lien.

41 **§ 7538. Notice of election**

42 7538. (a) The claimant may make a written request for notice of an election by
43 the construction lender under Section 7536 not to withhold funds. The request
44 shall be made at the time the claimant gives the construction lender the stop
45 payment notice and shall be accompanied by a preaddressed, stamped envelope.

1 (b) If the construction lender elects not to withhold funds under Section 7536,
2 the lender shall, within 30 days after making the election give notice to a claimant
3 that has requested notice of the election under subdivision (a). If the basis of the
4 election is the recordation of a payment bond under Section 7602, the construction
5 lender shall include a copy of the bond with the notice.

6 (c) A construction lender is not liable for failure to include a copy of the bond
7 with the notice under this section if all of the following conditions are satisfied:

8 (1) The failure was not intentional and resulted from a bona fide error.

9 (2) The lender maintains reasonable procedures to avoid an error of that type.

10 (3) The lender corrected the error not later than 20 days after the date the lender
11 discovered the violation.

12 **Comment.** Section 7538 restates paragraph (3) of subdivision (a) of former Sections 3159 and
13 3162 without substantive change. The last sentence of former Section 3159(a)(3) is continued in
14 Section 7530(b) (notice to construction lender to withhold funds).

15 See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7030
16 (“payment bond” defined), 7042 (“stop payment notice” defined).

17 **Article 4. Priorities**

18 **§ 7540. Distribution of funds withheld pursuant to stop payment notice**

19 7540. (a) Funds withheld pursuant to a stop payment notice shall be distributed
20 in the following order of priority:

21 (1) First, to pay claims of persons that have given a bonded stop payment notice.
22 If funds are insufficient to pay the claims of those persons in full, the funds shall
23 be distributed pro rata among the claimants in the ratio that the claim of each bears
24 to the aggregate of all claims for which a bonded stop payment notice is given.

25 (2) Second, to pay claims of persons that have given an unbonded stop payment
26 notice. If funds are insufficient to pay the claims of those persons in full, the funds
27 shall be distributed among the claimants in the ratio that the claim of each bears to
28 the aggregate of all claims for which an unbonded stop payment notice is given.

29 (b) Pro rata distribution under this section shall be made among the persons
30 entitled to share in the distribution without regard to the order in which the person
31 has given a stop payment notice or commenced an enforcement action.

32 **Comment.** Section 7540 restates former Section 3167 without substantive change. Only valid
33 claims, as determined in an enforcement action, are entitled to participate in the distribution. Cf.
34 Idaho Lumber Co. v. Northwestern S. & L. Ass’n, 265 Cal. App. 2d 490, 71 Cal. Rptr. 422
35 (1968). The amount of the claim for which payment is required is determined under Article 5
36 (commencing with Section 7550) (enforcement of stop payment notice).

37 See also Sections 7002 (“claimant” defined), 7032 (“person” defined), 7042 (“stop payment
38 notice” defined).

39 **Note.** We believe this recasting of existing Section 3167 captures its meaning. Experts should
40 examine the rewrite closely.

41 **§ 7542. Amount withheld**

42 7542. Notwithstanding Section 7540:

1 (a) A direct contractor or a subcontractor may recover pursuant to a stop
2 payment notice given to a construction lender only the net amount due the direct
3 contractor or subcontractor after deducting the claims of all subcontractors and
4 material suppliers that have given a bonded stop payment notice for work done on
5 behalf of the direct contractor or subcontractor.

6 (b) In no event is the construction lender required to withhold, pursuant to a
7 bonded stop payment notice, more than the net amount provided in subdivision
8 (a). Notwithstanding any other provision of this chapter, a construction lender is
9 not liable for failure to withhold more than that net amount on receipt of a bonded
10 stop payment notice.

11 **Comment.** Section 7542 restates subdivisions (b) and (c) of former Sections 3159 and 3162.

12 See also Sections 7004 (“construction lender” defined), 7012 (“direct contractor” defined),
13 7026 (“material supplier defined), 7042 (“stop payment notice” defined), 7044 (“subcontractor”
14 defined).

15 **Note.** Subdivision (a) relates to either a bonded or an unbonded notice, and subdivision (b)
16 relates only to a bonded notice. Yet they both seem to state the same rule. The Commission
17 would appreciate some input on whether we can simply delete subdivision (b), or whether it
18 serves a useful purpose.

19 In any event, the statute seems to be an exception to the general rules on priorities, so we have
20 relocated it among the priorities statutes for ease of reference.

21 **§ 7544. Effect of stop payment notice on assignment of funds**

22 7544. The rights of a claimant that gives a construction lender a stop payment
23 notice are not affected by an assignment of construction loan funds made by the
24 owner or direct contractor, and the stop payment notice has priority over the
25 assignment, whether the assignment is made before or after the stop payment
26 notice is given.

27 **Comment.** Section 7544 restates former Section 3166 without substantive change.

28 See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7012
29 (“direct contractor” defined), 7028 (“owner” defined), 7042 (“stop payment notice” defined).

30 Article 5. Enforcement of Claim Stated in Stop Payment Notice

31 **§ 7550. Time for enforcement of claim stated in stop payment notice**

32 7550. (a) A claimant shall commence an action to enforce the claim stated in a
33 stop payment notice not earlier than 10 days after the date the claimant gives the
34 notice and not later than 90 days after expiration of the time within which a stop
35 payment notice must be given. The action may not be brought to trial or judgment
36 entered before expiration of the time prescribed in this subdivision.

37 (b) If a claimant does not commence an action to enforce payment of the claim
38 stated in a stop payment notice within the time prescribed in subdivision (a), the
39 notice ceases to be effective and the person withholding funds pursuant to the
40 notice shall release them.

1 (c) Within five days after commencement of an action to enforce payment of the
2 claim stated in a stop payment notice, the claimant shall give notice of
3 commencement of the action to the persons to which the stop payment notice was
4 given.

5 **Comment.** Section 7550 restates former Section 3172 without substantive change. A stop
6 payment notice must be given before expiration of the time within which a claim of lien must be
7 recorded under Chapter 4 (commencing with Section 7400). See Section 7508 (requirements for
8 valid stop payment notice).

9 For the manner in which notice of commencement of an enforcement action is to be given, see
10 Section 7506 (manner of giving notice).

11 Funds released for failure to timely commence an enforcement action must be paid or delivered
12 to the person to which they are due.

13 See also Sections 7002 (“claimant” defined), 7032 (“person” defined), 7042 (“stop payment
14 notice” defined).

15 **Note.** The Commission solicits comment on whether subdivision (c), purporting to require a
16 five day notice, should be made mandatory. Under existing law, the provision is directory.
17 *Sunlight Elec. Supply Co. v. McKee*, 226 Cal. App. 2d 47, 37 Cal. Rptr. 782 (1964).

18 § 7552. Joinder, consolidation, and interpleader

19 7552. If more than one claimant has given a stop payment notice:

20 (a) Any number of claimants may join in the same enforcement action.

21 (b) If claimants commence separate actions, the court first acquiring jurisdiction
22 may order the actions consolidated.

23 (c) On motion of the owner or construction lender the court shall require all
24 claimants to be impleaded in one action, to the end that the rights of all parties
25 may be adjudicated in the action.

26 **Comment.** Section 7552 restates former Section 3175 without substantive change. Subdivision
27 (a) is a specific application of the general rule stated in Section 7054 (rules of practice).

28 See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7028
29 (“owner” defined), 7042 (“stop payment notice” defined).

30 **Note.** The reference in this section to the court “first acquiring jurisdiction” is evidently a
31 relic of pre-unification days when jurisdiction under the mechanics lien law could be in the
32 municipal or the superior court, depending on the amount in controversy. We have not eliminated
33 this provision because it arguably could still have relevance in the context of a work of
34 improvement that straddles a county line, in which case the superior court in either county would
35 have jurisdiction. See proposed Section 7052 (jurisdiction and venue). Is this a common enough
36 occurrence that it is worth addressing in the statute?

37 § 7554. Dismissal of enforcement action for lack of prosecution

38 7554. Notwithstanding Section 583.420 of the Code of Civil Procedure, the
39 court may dismiss an action to enforce payment of the claim stated in a stop
40 payment notice that is not brought to trial within two years after commencement.

41 **Comment.** Section 7554 restates former Section 3173 without substantive change. The cross-
42 reference to the Code of Civil Procedure is added to make clear that this section modifies the
43 general three-year period for discretionary dismissal. Cf. Section 7054 (rules of practice).

44 See also Section 7042 (“stop payment notice” defined).

1 **§ 7556. Dismissal of action or judgment against claimant**

2 7556. A stop payment notice ceases to be effective, and a person withholding
3 funds pursuant to the notice shall release them, if an action to enforce payment of
4 the claim stated in the stop payment notice is dismissed (unless expressly stated to
5 be without prejudice) or if judgment in the action is against the claimant.

6 **Comment.** Section 7556 restates former Section 3174 without substantive change. Funds
7 released as a result of dismissal of the action or judgment against the claimant must be paid or
8 delivered to the person to which they are due.

9 See also Sections 7002 (“claimant” defined), 7032 (“person” defined), 7042 (“stop payment
10 notice” defined).

11 **§ 7558. Attorney’s fee in action to enforce payment of claim stated in bonded stop payment**
12 **notice**

13 7558. (a) In an action to enforce payment of the claim stated in a bonded stop
14 payment notice, the prevailing party is entitled to a reasonable attorney’s fee in
15 addition to costs and damages.

16 (b) The court, on notice and motion by a party, shall determine which is the
17 prevailing party or that there is no prevailing party for the purpose of this section,
18 regardless of whether the action proceeds to final judgment. The prevailing party
19 is the party that recovers greater relief in the action, subject to the following
20 limitations:

21 (1) If the action is voluntarily dismissed or dismissed pursuant to a settlement,
22 there is no prevailing party.

23 (2) If the defendant tenders to the claimant the full amount to which the
24 defendant is entitled, and deposits in court for the claimant the amount so
25 tendered, and alleges those facts in the answer and the allegation is determined to
26 be true, the defendant is deemed to be the prevailing party.

27 **Comment.** Section 7558 restates former Section 3176 without substantive change.

28 See also Sections 7002 (“claimant” defined), 7042 (“stop payment notice” defined).

29 **Note.** The existing statute refers to an action against an owner or construction lender to
30 enforce payment of the claim stated in a bonded stop payment notice. But a bonded notice is only
31 given to a construction lender under existing Section 3083, not to an owner. We have omitted the
32 reference to particular defendants from this draft.

33 **§ 7560. Interest in action to enforce payment of claim stated in bonded stop payment notice**

34 7560. If the claimant is the prevailing party in an action to enforce payment of
35 the claim stated in a bonded stop payment notice, any amount awarded on the
36 claim shall include interest at the legal rate calculated from the date the stop
37 payment notice is given.

38 **Comment.** Section 7560 restates former Section 3176.5 without substantive change.

39 See also Sections 7002 (“claimant” defined), 7042 (“stop payment notice” defined).

40 **Note.** The existing statute refers to an action against an owner or construction lender to
41 enforce payment of the claim stated in a bonded stop payment notice. But a bonded notice is only
42 given to a construction lender under existing Section 3083, not to an owner. We have omitted the
43 reference to particular defendants from this draft.

1 The existing statute refers to the date the bonded notice is given to the owner or construction
2 lender “pursuant to Section 3172.” This cross-reference is confusing because Section 3172 does
3 not deal with the giving of a stop payment notice; it prescribes the limitation period for
4 commencing an action to enforce payment of the claim stated in a notice. Perhaps a reference to
5 Section 3162 was intended; that section deals with the duties of a construction lender on receipt
6 of a stop payment notice. We have simply eliminated the cross-reference in this draft.

7 CHAPTER 6. PAYMENT BOND

8 **§ 7600. Public policy of payment bond**

9 7600. An owner may require a payment bond or other security as protection
10 against a direct contractor’s failure to perform the contract or to make full
11 payment for all labor, service, equipment, and material provided pursuant to the
12 contract.

13 **Comment.** Section 7600 restates the second sentence of former Section 3236 without
14 substantive change.

15 See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7016 (“labor,
16 service, equipment, or material” defined), 7028 (“owner” defined), 7030 (“payment bond”
17 defined), 7046 (“work of improvement” defined).

18 **§ 7602. Limitation of owner’s liability**

19 7602. (a) The court shall limit an owner’s liability to the contract price under
20 subdivision (b) if, before the commencement of work, the owner in good faith files
21 the contract with the county recorder and records a payment bond of the direct
22 contractor given by sufficient sureties in an amount not less than 50 percent of the
23 contract price.

24 (b) If the conditions of subdivision (a) are satisfied, the court shall restrict lien
25 enforcement under this part to the aggregate amount due from the owner to the
26 direct contractor and shall enter judgment against the direct contractor and surety
27 on the bond for any deficiency that remains between the amount due to the direct
28 contractor and the whole amount due to claimants.

29 **Comment.** Subdivision (a) of Section 7602 restates the first part of former Section 3235 and
30 the first sentence of former Section 3236 without substantive change. It makes clear that the
31 bond, as well as the contract, must be recorded before the commencement of work. See also
32 Section 7056 (filing and recording of papers).

33 Subdivision (b) restates the last part of former Section 3235. It replaces the restriction of lien
34 enforcement in cases where it would be equitable, with a restriction of lien enforcement in cases
35 where the sureties are sufficient. See also Code Civ. Proc. § 995.310 (sufficient sureties on bond
36 required). This codifies case law interpretation of former Section 3235 and is consistent with the
37 “in all cases” language of former Section 3236. See, e.g., *Simpson v. Bergmann*, 125 Cal. App. 1,
38 13 P.2d 531 (1932), *Sudden Lumber Co. v. Singer*, 103 Cal. App. 386, 284 P. 477 (1930), *S.R.*
39 *Frazee Co. v. Arnold*, 46 Cal. App. 74, 76, 188 P. 822 (1920). See also Section 14 (singular
40 includes plural).

41 See also Sections 7002 (“claimant” defined), 7006 (“contract” defined), 7008 (“contract price”
42 defined), 7012 (“direct contractor” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7030
43 (“payment bond” defined).

1 **§ 7604. Bond required by lending institution**

2 7604. If a lending institution requires that a payment bond be given as a
3 condition of lending money to finance a work of improvement, and accepts in
4 writing as sufficient a bond given in fulfillment of the requirement, the lending
5 institution may not thereafter object to the borrower as to the validity of the bond
6 or refuse to make the loan based on an objection to the bond if the bond is given
7 by an admitted surety insurer.

8 **Comment.** Section 7604 supersedes former Section 3237. It makes clear that the lender may
9 not object to the bond if given by an admitted surety insurer. Cf. Code Civ. Proc. § 995.120
10 (“admitted surety insurer” means corporate insurer to which Insurance Commissioner has issued
11 certificate of authority to transact surety insurance in state).

12 See also Sections 7022 (“lending institution” defined), 7030 (“payment bond” defined), 7032
13 (“person” defined), 7046 (“work of improvement” defined).

14 See also Code Civ. Proc. §§ 995.130 (“beneficiary” defined), 995.140 (“bond” defined),
15 995.185 (“surety” defined).

16 **Note.** This draft would reverse the apparent rule of existing law that a lender may object to a
17 bond writer only if licensed by the Department of Insurance.

18 **§ 7606. Payment bond**

19 7606. (a) A payment bond shall be conditioned for the payment in full of the
20 claims of all claimants and shall by its terms inure to the benefit of all claimants so
21 as to give a claimant a right of action to enforce the liability on the bond.

22 (b) An owner, direct contractor, or subcontractor may be the principal on the
23 bond.

24 (c) A claimant may enforce the liability on the bond in an action to enforce a
25 lien under this part or in a separate action on the bond.

26 **Comment.** Section 7606 restates former Section 3096 without substantive change. See also
27 Section 7140 (application of Bond and Undertaking Law). The statute is relocated to the general
28 provisions on payment bonds because it states substantive rules.

29 See also Sections 7002 (“claimant” defined), 7012 (“direct contractor” defined), 7024 (“lien”
30 defined), 7028 (“owner” defined), 7044 (“subcontractor” defined).

31 **§ 7608. Limitation on part**

32 7608. (a) This part does not give a claimant a right to recover on a direct
33 contractor’s payment bond given under this chapter unless the claimant provided
34 labor, service, equipment, or material to the direct contractor or one of the direct
35 contractor’s subcontractors pursuant to a contract between the direct contractor
36 and the owner.

37 (b) Nothing in this section affects the stop payment notice right of, and relative
38 priorities among, design professionals and holders of secured interests in the
39 property.

40 **Comment.** Section 7608 restates former Section 3267 without substantive change.

41 See also Sections 7002 (“claimant” defined), 7006 (“contract” defined), 7010 (“design
42 professional” defined), 7012 (“direct contractor” defined), 3083.030 (“labor, service, equipment,
43 or material” defined), 7028 (“owner” defined), 7044 (“subcontractor” defined).

1 **§ 7610. Statute of limitations against surety on recorded bond**

2 7610. If a payment bond is recorded before completion of a work of
3 improvement, an action to enforce the liability on the bond may not be
4 commenced later than six months after completion of the work of improvement.

5 **Comment.** Section 7610 restates former Section 3240, and broadens it to cover enforcement of
6 any liability on the bond, not limited to the liability of the surety. Cf. Code Civ. Proc. § 996.440
7 (judgment on bond against principal and sureties). It supersedes former Section 3239 (provision
8 shortening statute of limitations). See also Section 7056 (filing and recording of papers),
9 completion.

10 See also Sections 7030 (“payment bond” defined), 7046 (“work of improvement” defined).

11 See also Code Civ. Proc. §§ 995.130 (“beneficiary” defined), 995.140 (“bond” defined).

12 **§ 7612. Notice prerequisite to enforcement**

13 7612. A claimant may not enforce the liability on a payment bond unless any of
14 the following conditions is satisfied:

15 (a) The claimant has given preliminary notice to the extent required by Chapter
16 2 (commencing with Section 7200).

17 (b) The claimant has given notice to the principal and surety within the earlier of
18 75 days after completion of the work of improvement or 15 days after recordation
19 of a notice of completion.

20 **Comment.** Section 7612 restates former Section 3242 without substantive change. See also
21 Sections 7100-7116 (notice). The former limitation to a contract entered into on or after January
22 1, 1995, is omitted due to lapse of time.

23 See also Sections 14 (singular includes plural), 7108 (mailed notice and proof of notice), 7150
24 (completion), 7152 (notice of completion).

25 See also Sections 7002 (“claimant” defined), 7030 (“payment bond” defined), 7034
26 (“preliminary notice” defined), 7046 (“work of improvement” defined).

27 CHAPTER 7. SECURITY FOR LARGE PROJECT

28 Article 1. Application of Chapter

29 **§ 7700. Application of chapter**

30 7700. (a) This chapter applies if any of the following conditions is satisfied:

31 (1) The owner of the fee interest in property contracts for a work of
32 improvement on the property with a contract price greater than five million dollars
33 (\$5,000,000).

34 (2) The owner of a less than fee interest in property contracts for a work of
35 improvement on the property with a contract price greater than one million dollars
36 (\$1,000,000).

37 (b) For the purpose of this section:

38 (1) The owner of the fee interest in property is not deemed to be the owner of a
39 less than fee interest by reason of a mortgage, deed of trust, ground lease, or other
40 lien or encumbrance or right of occupancy that encumbers the fee interest.

1 (2) A lessee of property is deemed to be the owner of a fee interest in the
2 property if all of the following conditions are satisfied:

3 (A) The initial term of the lease is at least 35 years.

4 (B) The lease covers one or more lawful parcels under the Subdivision Map Act,
5 Division 2 (commencing with Section 66410) of Title 7 of the Government Code,
6 and any applicable local ordinance adopted under that Act, in their entirety,
7 including but not limited to a parcel approved pursuant to a certificate of
8 compliance proceeding.

9 **Comment.** Subdivision (a) of Section 7700 restates former Section 3110.5(a)(2) without
10 substantive change. Subdivision (b) restates former Section 3110.5(a)(1) without substantive
11 change.

12 This section standardizes terminology consistent with the remainder of the mechanics lien law.
13 A less than fee interest includes a leasehold interest in the property. See Section 7028 (“owner”
14 defined). See also Section 7046 (“work of improvement” defined).

15 Under this section, if the owner that contracts for the work of improvement owns the fee
16 interest in the property, the owner of a less than fee interest that does not contract for the work of
17 improvement is not required to provide security or to comply with any other obligation of an
18 owner under this chapter.

19 If the owner that contracts for a work of improvement owns a less than fee interest in the
20 property, the owner of the fee interest that does not contract for the work of improvement is not
21 required to provide security or to comply with any other obligation of an owner under this
22 chapter.

23 **Note.** We have replaced the ambiguous term “value of the contract” with the more precise
24 term commonly used in the mechanics lien law — “contract price.”

25 **§ 7702. Single-family residence and low income housing, excluded**

26 7702. This chapter does not apply to any of the following works of
27 improvement:

28 (a) A single-family residence, including a single-family residence located within
29 a subdivision, and any associated fixed work that requires the services of a general
30 engineering contractor as defined in Section 7056 of the Business and Professions
31 Code. As used in this subdivision, “single-family residence” means a real property
32 improvement used or intended to be used as a dwelling unit for one family.

33 (b) A housing development eligible for a density bonus under Section 65915 of
34 the Government Code.

35 **Comment.** Section 7702 restates former Section 3110.5(e) without substantive change,
36 omitting reference to a public work. This part does not apply to a public work. See Section 7050
37 (application of part).

38 **§ 7704. Qualified publicly traded company and qualified private company excluded**

39 7704. This chapter does not apply to any of the following owners:

40 (a) A qualified publicly traded company or a wholly owned subsidiary of a
41 qualified publicly traded company, if the obligations of the subsidiary pursuant to
42 the contract for the work of improvement are guaranteed by the parent. As used in
43 this subdivision, “qualified publicly traded company” means a company having a
44 class of equity securities listed for trading on the New York Stock Exchange, the

1 American Stock Exchange, or the NASDAQ stock market, and the
2 nonsubordinated debt securities of which are rated as “investment grade” by either
3 Fitch ICBA, Inc., Moody’s Investor Services, Inc., Standard & Poor’s Ratings
4 Services, or a similar statistical rating organization that is nationally recognized
5 for rating the creditworthiness of a publicly traded company. If at any time before
6 final payment of all amounts due pursuant to the contract the nonsubordinated debt
7 securities of the qualified publicly traded company are downgraded to below
8 “investment grade” by any of those rating organizations, the owner is no longer
9 exempt from this chapter.

10 (b) A qualified private company or a wholly owned subsidiary of a qualified
11 private company, if the obligations of the subsidiary pursuant to the contract for
12 the work of improvement are guaranteed by the parent. As used in this
13 subdivision, “qualified private company” means a company that has no equity
14 securities listed for trading on the New York Stock Exchange, the American Stock
15 Exchange, or the NASDAQ stock market, and that has a net worth determined in
16 accordance with generally accepted accounting principles in excess of fifty million
17 dollars (\$50,000,000). If at any time before final payment of all amounts due
18 pursuant to the contract the net worth of the qualified private company is reduced
19 below that level, the owner is no longer exempt from this chapter.

20 **Comment.** Section 7704 restates former Section 3110.5(f) without substantive change.

21 See also Sections 7006 (“contract” defined), 7028 (“owner” defined), 7046 (“work of
22 improvement” defined).

23 Article 2. Security Requirement

24 § 7710. Security for owner’s payment obligation

25 7710. An owner shall provide the direct contractor all of the following:

26 (a) Security for the owner’s payment obligation pursuant to the contract. The
27 security shall be used only if the owner defaults on the payment obligation to the
28 direct contractor. This subdivision does not apply to an owner that is the majority
29 owner of the direct contractor.

30 (b) A copy, certified by the county recorder, of any recorded mortgage or deed
31 of trust that secures the construction loan of a lending institution for the work of
32 improvement, disclosing the amount of the loan.

33 **Comment.** Section 7710 restates the first parts of subdivisions (a) and (b) of former Section
34 3110.5 without substantive change. As used in this section, “owner” includes the owner of the fee
35 simple absolute interest or any lesser interest in the property. See Section 7028 (“owner”
36 defined). The reference to a “work of improvement” includes construction, alteration, addition to,
37 or repair upon, the property. See Section 7046 (“work of improvement” defined).

38 See also Sections 7100-7116 (notice), 7134 (construction trust deed).

39 See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7022 (“lending
40 institution” defined).

41 **Note.** We have applied the term “lending institution”, as used in the mechanics lien law in
42 subdivision (b). The term includes commercial bank, savings and loan institution, credit union, or

1 other organization or person engaged in the business of financing loans. The term apparently
2 differs from “financial institution”, used elsewhere in this chapter.

3 **§ 7712. Demand for security**

4 7712. If an owner fails to provide or maintain the security required by this
5 chapter, the direct contractor may give the owner notice demanding security. If the
6 owner does not provide or maintain the security within 10 days after notice
7 demanding security is given, the direct contractor may suspend work until the
8 owner provides or maintains the security.

9 **Comment.** Section 7712 restates the second sentence of former Section 3110.5(c) without
10 substantive change.

11 See also Sections 7100-7116 (notice).

12 See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined).

13 **§ 7714. Security not waivable**

14 7714. It is against public policy by contract to waive the provisions of this
15 chapter.

16 **Comment.** Section 7714 restates former Section 3110.5(g) without substantive change. This
17 part does not apply to a public work. See Section 7050 (application of part).

18 See also Section 7006 (“contract” defined).

19 **§ 7716. Rights of subcontractor not affected**

20 7716. This chapter does not affect any statute providing a subcontractor the right
21 to record a claim of lien, file a stop payment notice, assert a claim against a
22 payment bond, or receive prompt payment, including the direct contractor’s
23 payment responsibilities under Section 7108.5 of the Business and Professions
24 Code.

25 **Comment.** Section 7716 restates former Section 3110.5(d), omitting the reference to Public
26 Contract Code Section 10262. This chapter does not apply to a public works contract. Cf. Section
27 7050 (application of part).

28 See also Sections 7012 (“direct contractor” defined), 7024 (“lien” defined), 7030 (“payment
29 bond” defined), 7044 (“subcontractor” defined).

30 **Article 3. Form of Security**

31 **§ 7720. Form of security**

32 7720. An owner shall provide security by any of the following means:

33 (a) A bond that satisfies Section 7722.

34 (b) An irrevocable letter of credit that satisfies Section 7724.

35 (c) An escrow account that satisfies Section 7726.

36 **Comment.** Section 7720 restates a part of former Section 3110.5(b) without substantive
37 change.

38 See also Section 7028 (“owner” defined).

1 **§ 7722. Bond**

2 7722. A bond under this chapter shall satisfy all of the following requirements:

3 (a) The bond shall be executed by an admitted surety insurer that is either listed
4 in the Department of the Treasury’s Listing of Approved Sureties (Department
5 Circular 570) or that has an A.M. Best rating of A or better and has an
6 underwriting limitation, under Section 12090 of the Insurance Code, greater than
7 the amount of the bond.

8 (b) The bond shall be in an amount not less than 15 percent of the contract price
9 for the work of improvement or, if the work of improvement is to be substantially
10 completed within six months after the commencement of work, not less than 25
11 percent of the contract price.

12 (c) The bond shall be conditioned for payment on default by the owner of any
13 undisputed amount pursuant to the contract that is due and payable for more than
14 30 days.

15 **Comment.** Section 7722 restates former Section 3110.5(b)(1).

16 See also Code Civ. Proc. § 995.120 (“admitted surety insurer” defined).

17 See also Sections 7006 (“contract” defined), 7008 (“contract price” defined), 7028 (“owner”
18 defined), 7046 (“work of improvement” defined).

19 **Note.** We have replaced the term “total amount of the contract” with the term commonly used
20 in the mechanics lien law — “contract price.”

21 **§ 7724. Irrevocable letter of credit**

22 7724. An irrevocable letter of credit under this chapter shall satisfy all of the
23 following requirements:

24 (a) The letter of credit shall be issued by a financial institution, as defined in
25 Section 5107 of the Financial Code, inuring to the benefit of the direct contractor.

26 (b) The letter of credit shall be in an amount not less than 15 percent of the
27 contract price for the work of improvement or, if the work of improvement is to be
28 substantially completed within six months after the commencement of work, not
29 less than 25 percent of the contract price.

30 (c) The maturity date and other terms of the letter of credit shall be determined
31 by agreement between the owner, the direct contractor, and the financial
32 institution, except that the owner shall maintain the letter of credit in effect until
33 the owner has satisfied its payment obligation to the direct contractor.

34 **Comment.** Section 7724 restates former Section 3110.5(b)(2) without substantive change.

35 See also Sections 7008 (“contract price” defined), 7012 (“direct contractor” defined), 7028
36 (“owner” defined), 7046 (“work of improvement” defined).

37 **Note.** We have replaced the term “total amount of the contract” with the term commonly used
38 in the mechanics lien law — “contract price.”

39 **§ 7726. Escrow account**

40 7726. An escrow account under this chapter shall satisfy all of the following
41 requirements:

42 (a) The account shall be designated as a “construction security escrow account”.

1 (b) The account shall be located in this state and maintained with an escrow
2 agent licensed under the Escrow Law, Division 6 (commencing with Section
3 17000) of the Financial Code, or with any person exempt from the Escrow Law
4 under paragraph (1) or (3) of subdivision (a) of Section 17006 of the Financial
5 Code.

6 (c) The owner shall deposit funds in the account in the amount provided in
7 Section 7728. This chapter does not require a construction lender to agree to
8 deposit proceeds of a construction loan in the account.

9 (d) The owner shall grant the direct contractor a perfected, first priority security
10 interest in the account and in all funds deposited by the owner in the account and
11 in their proceeds, established to the reasonable satisfaction of the direct contractor,
12 which may be by a written opinion of legal counsel for the owner.

13 (e) The funds on deposit in the account shall be the sole property of the owner,
14 subject to the security interest of the direct contractor. The owner and the direct
15 contractor shall instruct the escrowholder to hold the funds on deposit in the
16 account for the purpose of perfecting the direct contractor's security interest in the
17 account and to disburse those funds only on joint authorization of the owner and
18 the direct contractor, or pursuant to a court order that is binding on both of them.

19 **Comment.** Section 7726 restates portions of former Section 3110.5(b)(3) without substantive
20 change.

21 See also Sections 7004 ("construction lender" defined), 7012 ("direct contractor" defined),
22 7028 ("owner" defined).

23 **Note.** It is unclear what it means for an escrow account to be "located" in this state. Do
24 deposits to the account have to be held in the form of bullion on site? Suppose the escrowholder
25 deposits receipts to, and issues checks drawn against, an account in a financial institution that is
26 headquartered elsewhere? Should this requirement be dropped as essentially meaningless?

27 **§ 7728. Deposits to and disbursements from escrow account**

28 7728. The following provisions govern a deposit to or disbursement from a
29 construction security escrow account under this chapter:

30 (a) Before the commencement of work the owner shall make an initial deposit to
31 the account in an amount not less than 15 percent of the contract price for the work
32 of improvement or, if the work of improvement is to be substantially completed
33 within six months after the commencement of work, not less than 25 percent of the
34 contract price.

35 (b) If the contract provides for a retention to be withheld from a periodic
36 payment to the direct contractor, the owner shall deposit to the account the amount
37 withheld as retention at the time the owner makes the corresponding payment to
38 the direct contractor from which the retention is withheld.

39 (c) The amount required to be maintained on deposit shall not exceed the total
40 amount remaining to be paid to the direct contractor pursuant to the contract or as
41 adjusted by agreement between the owner and the direct contractor. If the amount
42 on deposit equals or exceeds the total amount remaining to be paid to the direct
43 contractor, the owner and the direct contractor shall authorize disbursement to the

1 direct contractor for progress payments then due the direct contractor, but a party
2 is not obligated to authorize disbursement that would cause the amount remaining
3 on deposit following the disbursement to be less than the total amount remaining
4 to be paid to the direct contractor.

5 (d) The owner and the direct contractor shall authorize the disbursement to the
6 owner of any funds remaining on deposit after the direct contractor has been paid
7 all amounts due pursuant to the contract. The owner and the direct contractor shall
8 authorize the disbursement of funds on deposit pursuant to a court order that is
9 binding on both of them. The owner and the direct contractor may agree in the
10 contract to additional conditions for the disbursement of funds on deposit, except
11 that the conditions may not cause the amount remaining on deposit to be less than
12 the amount required under this section.

13 **Comment.** Section 7728 restates portions of former Section 3110.5(b)(3) without substantive
14 change.

15 See also Sections 7006 (“contract” defined), 7008 (“contract price” defined), 7012 (“direct
16 contractor” defined), 7028 (“owner” defined), 7046 (“work of improvement” defined).

17 **§ 7730. Contract price**

18 7730. If the contract price for a work of improvement is not a fixed price, the
19 amount of security provided under this chapter shall be the guaranteed maximum
20 price or, if there is no guaranteed maximum price, the owner’s and direct
21 contractor’s good faith estimate of the reasonable value of the labor, service,
22 equipment, or material to be provided pursuant to the contract.

23 **Comment.** Section 7730 restates the first sentence of former Section 3110.5(c) without
24 substantive change.

25 See also Sections 7006 (“contract” defined), 7008 (“contract price” defined), 7012 (“direct
26 contractor” defined), 7028 (“owner” defined), 7046 (“work of improvement” defined).

27 **CHAPTER 8. PROMPT PAYMENT**

28 **Article 1. Progress Payment**

29 **§ 7800. Progress payment between owner and direct contractor**

30 7800. (a) Except as otherwise agreed in writing by the owner and direct
31 contractor, the owner shall pay the direct contractor, within 30 days after notice
32 demanding payment pursuant to the contract, any progress payment due as to
33 which there is no good faith dispute between them.

34 (b) If there is a good faith dispute between the owner and direct contractor, the
35 owner may withhold from the progress payment an amount not in excess of 150
36 percent of the disputed amount.

37 (c) An owner that violates this section is liable to the direct contractor for a
38 penalty of two percent per month on the amount wrongfully withheld, in place of
39 any interest otherwise due. In an action for collection of the amount wrongfully
40 withheld, the prevailing party is entitled to costs and a reasonable attorney’s fee.

1 (d) This section does not supersede any requirement of Article 2 (commencing
2 with Section 7810) relating to the withholding of a retention.

3 **Comment.** Section 7800 restates former Section 3260.1, with the addition of a reasonableness
4 limitation on an attorney’s fee. This section is limited to a private work. See Section 7050
5 (application of part). The operative date provision of subdivision (a) of former Section 3260.1 is
6 omitted due to lapse of time.

7 The owner’s duty runs from the time notice is complete, rather than the time of “receipt”. See
8 Section 7114 (when notice is complete).

9 See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7028 (“owner”
10 defined).

11 **Note.** We have limited the introductory proviso of subdivision (a), relating to a written
12 agreement between the owner and contractor, to subdivision (a), and have not extended the
13 proviso to subdivisions (b) and (c). This appears to capture the intent of existing law.

14 **§ 7802. Progress payment between direct contractor and subcontractor on public utility**
15 **work**

16 7802. (a) This section applies to a contract between a public utility and a direct
17 contractor for all or part of a work of improvement.

18 (b) Unless the direct contractor and a subcontractor otherwise agree in writing,
19 within 21 days after receipt of a progress payment from the public utility the direct
20 contractor shall pay the subcontractor the amount allowed the direct contractor on
21 account of the work performed by the subcontractor to the extent of the
22 subcontractor’s interest in the work. If there is a good faith dispute over all or part
23 of the amount due on a progress payment from the direct contractor to a
24 subcontractor, the direct contractor may withhold an amount not in excess of 150
25 percent of the disputed amount.

26 (c) A direct contractor that violates this section is liable to the subcontractor for
27 a penalty of two percent of the disputed amount due per month for every month
28 that payment is not made. In an action for collection of the amount wrongfully
29 withheld, the prevailing party is entitled to costs and a reasonable attorney’s fee.

30 (d) This section does not limit or impair a contractual, administrative, or judicial
31 remedy otherwise available to a contractor or subcontractor in a dispute involving
32 late payment or nonpayment by the contractor or deficient performance or
33 nonperformance by the subcontractor.

34 **Comment.** Section 7802 restates former Section 3262.5, with the addition of a reasonableness
35 limitation on an attorney’s fee. The reference to 15 “working days” is converted to 21 “days”,
36 consistent with the remainder of the mechanics lien law. Cf. Section 9 (business day).

37 See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7044
38 (“subcontractor” defined), 7046 (“work of improvement” defined).

39 **Note.** Existing law makes this section applicable to a contract “to do business” with a public
40 utility. We have limited it to a work of improvement contracted for by a public utility, consistent
41 with placement of this section in the mechanics lien law.

Article 2. Retention Payment

§ 7810. Application of article

7810. This article governs a retention withheld by an owner from a direct contractor or by a direct contractor from a subcontractor.

Comment. Section 7810 restates subdivision (b) of former Section 3260 without substantive change. This article is limited to a private work. See Section 7050 (application of part). The transitional provision found in subdivision (a) of former Section 3260, relating to contracts entered into before 1991, 1993, and 1994, is omitted due to lapse of time.

See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined), 7044 (“subcontractor” defined).

§ 7812. Payment of retention by owner

7812. (a) If an owner withholds a retention from a direct contractor, the owner shall, within 45 days after completion of the work of improvement, pay the retention to the contractor.

(b) If part of a work of improvement ultimately will become the property of a public entity, the owner may condition payment of a retention allocable to that part on acceptance of the part by the public entity.

(c) If there is a good faith dispute between the owner and direct contractor, the owner may withhold from final payment an amount not in excess of 150 percent of the disputed amount.

Comment. Section 7812 restates subdivision (c) of former Section 3260, except that detailed provisions defining the date of completion are eliminated in reliance on the general provisions of this part governing completion. See Section 7150 (completion). The right of the owner to withhold disputed amounts is made subject to a condition of good faith, consistent with other provisions of this part.

See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined), 7036 (“public entity” defined), 7046 (“work of improvement” defined).

Note. We have eliminated the definition of “date of completion” found in the existing statute, in reliance on general provisions relating to completion. See Section 7150 (completion). We have done this in the interest of simplification of the statute.

We have generalized subdivision (c), which under existing law could be read as limited to the circumstances described in subdivision (b). However the existing ambiguity appears to be the consequence of a defective amendment process, not the result of a policy decision.

It is unclear why, under existing law, the owner may withhold regardless of whether the dispute is in good faith. The other provisions of this chapter require a good faith dispute. We have incorporated the general standard here.

§ 7814. Payment of retention by direct contractor

7814. (a) If a direct contractor has withheld a retention from a subcontractor, the direct contractor shall, within 10 days after receiving all or part of a retention payment, pay the subcontractor its share of the payment.

(b) If a retention payment received by the direct contractor is specifically designated for a particular subcontractor, the direct contractor shall pay the

1 retention payment to the designated subcontractor, if consistent with the terms of
2 the subcontract.

3 (c) If a good faith dispute exists between the direct contractor and a
4 subcontractor, the direct contractor may withhold from the retention payment to
5 the subcontractor an amount not in excess of 150 percent of the estimated value of
6 the disputed amount.

7 **Comment.** Section 7814 restates subdivisions (d) and (e) of former Section 3260 without
8 substantive change.

9 See also Sections 7012 (“direct contractor” defined), 7044 (“subcontractor” defined).

10 **§ 7816. Payment for disputed work**

11 7816. (a) If the direct contractor gives the owner, or a subcontractor gives the
12 direct contractor, notice that work in dispute has been completed in accordance
13 with the contract, the owner or direct contractor shall within 10 days give notice
14 advising the notifying party of the acceptance or rejection of the disputed work.

15 (b) Within 10 days after acceptance of disputed work, the owner or direct
16 contractor shall pay the portion of the retention relating to the disputed work.

17 **Comment.** Section 7816 restates subdivision (f) of former Section 3260 without substantive
18 change. See also Sections 7100-7116 (notice).

19 See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7028 (“owner”
20 defined), 7044 (“subcontractor” defined).

21 **§ 7818. Wrongful withholding**

22 7818. If an owner or direct contractor does not make a retention payment within
23 the time required by this article:

24 (a) The owner or direct contractor is liable to the person to which payment is
25 owed for a penalty of two percent per month on the amount wrongfully withheld,
26 in place of any interest otherwise due.

27 (b) In an action for collection of the amount wrongfully withheld, the prevailing
28 party is entitled to costs and a reasonable attorney’s fee.

29 **Comment.** Section 7818 restates subdivision (g) of former Section 3260, with the addition of a
30 reasonableness limitation on an attorney’s fee.

31 See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined), 7032 (“person”
32 defined).

33 **§ 7820. Waiver against public policy**

34 7820. It is against public policy by contract to waive the provisions of this
35 article.

36 **Comment.** Section 7820 restates subdivision (h) of former Section 3260 without substantive
37 change.

38 **§ 7822. Construction loan exempt**

39 7822. This article does not apply to a retention withheld by a lender pursuant to
40 a construction loan agreement.

41 **Comment.** Section 7822 restates subdivision (i) of former Section 3260.

Article 3. Stop Work Notice

§ 7830. “Stop work notice” defined

7830. “Stop work notice” means notice given under this article by a direct contractor to an owner that the contractor will stop work if the amount owed the contractor is not paid within 10 days after notice is given.

Comment. Section 7830 restates a part of the first sentence of former Section 3260.2(a) without substantive change. This article is limited to a private work. See Section 7050 (application of part).

Former Section 3260.2(g), relating to the mechanics of the notice, is superseded by Sections 7100-7116 (notice).

See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined).

§ 7832. Stop work notice

7832. If a direct contractor is not paid the amount due pursuant to a written contract within 35 days after the date payment is due under the contract, and there is no dispute as to the satisfactory performance of the contractor, the contractor may give the owner a stop work notice.

Comment. Section 7832 restates a portion of the first sentence of former Section 3260.2(a) without substantive change.

See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined).

§ 7834. Additional notice

7834. A direct contractor that gives an owner a stop work notice shall give the following additional notice:

(a) At least five days before giving the stop work notice, the contractor shall post notice of intent to give a stop work notice.

(b) At the same time the contractor gives the stop work notice, the contractor shall give a copy of the stop work notice to all subcontractors with which the contractor has a direct contractual relationship on the work of improvement.

Comment. Section 7834 restates the second and third sentences of former Section 3260.2(a), and requires that the contractor give a copy of the stop work notice. See also Section 7112 (posting).

See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined), 7038 (“site” defined), 7044 (“subcontractor” defined), 7046 (“work of improvement” defined).

§ 7836. Notice to construction lender

7836. Within five days after receipt of a stop work notice from a direct contractor, the owner shall give a copy of the notice to the construction lender, if any.

Comment. Section 7836 restates the fourth sentence of former Section 3260.2(a). See also Sections 7100-7116 (notice).

See also Sections 7004 (“construction lender” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined).

1 **§ 7838. Immunity from liability**

2 7838. (a) The direct contractor or the direct contractor's surety is not liable for
3 delay or damage that the owner or a subcontractor may suffer as a result of the
4 direct contractor giving a stop work notice and subsequently stopping work for
5 nonpayment, if the notice and posting requirements of this article are satisfied.

6 (b) The direct contractor's liability to a subcontractor or material supplier
7 resulting from stopping work under this article is limited to the amount of
8 monetary damages the subcontractor or material supplier could otherwise recover
9 under this part for labor, service, equipment, or material provided up to the date
10 the subcontractor ceases work, subject to the following exceptions:

11 (1) The direct contractor's liability continues for labor, service, equipment, or
12 material provided up to and including the 10 day notice period and not beyond.

13 (2) This subdivision does not limit monetary damages for custom work,
14 including materials that have been fabricated, manufactured, or ordered to
15 specifications that are unique to the job.

16 **Comment.** Section 7838 restates former Section 3260.2(c), except that provisions that appear
17 to suggest that a subcontractor may give a stop work notice are deleted.

18 See also Sections 7012 ("direct contractor" defined), 7016 ("labor, service, equipment, or
19 material" defined), 7026 ("material supplier" defined), 7028 ("owner" defined), 7044
20 ("subcontractor" defined).

21 **§ 7840. Notice of resolution of dispute or cancellation of stop work notice**

22 7840. On resolution of the dispute or the direct contractor's cancellation of the
23 stop work notice, the contractor shall post, and give subcontractors with which the
24 contractor has a direct contractual relationship on the work of improvement, notice
25 of the resolution or cancellation.

26 **Comment.** Section 7840 restates the second paragraph of former Section 3260.2(a) without
27 substantive change. See also Section 7112 (posting).

28 See also Sections 7012 ("direct contractor" defined), 7038 ("site" defined), 7044
29 ("subcontractor" defined), 7046 ("work of improvement" defined).

30 **§ 7842. Stop work remedy not exclusive**

31 7842. A direct contractor's right to stop work under this article is in addition to
32 other rights the direct contractor may have under the law.

33 **Comment.** Section 7842 restates former Section 3260.2(b) without substantive change.

34 See also Section 7012 ("direct contractor" defined).

35 **§ 7844. Judicial proceeding**

36 7844. If payment of the amount due is not made within 10 days after a stop work
37 notice is given, the direct contractor or the direct contractor's surety may in an
38 expedited proceeding seek a judicial determination of liability for the amount due.

39 **Comment.** Section 7844 restates former Section 3260.2(d) without substantive change. See
40 also section 7052 (jurisdiction and venue).

41 See also Section 7012 ("direct contractor" defined).

1 **Note.** It's not clear what sort of expedited proceeding is referred to here. Is this a trial setting
2 preference, or something else? The statute lacks detail. It may be best to simply delete the
3 reference to expedition.

4 **§ 7846. Waiver against public policy**

5 7846. It is against public policy by contract to waive the provisions of this
6 article.

7 **Comment.** Section 7846 restates former Section 3260.2(e) without substantive change.

8 **§ 7848. Application of article**

9 7848. (a) This article applies to a contract entered into on or after January 1,
10 1999.

11 (b) This article does not apply to a retention withheld by a lender pursuant to a
12 construction loan agreement.

13 **Comment.** Section 7848 restates former Section 3260.2(f) without substantive change.

14 **PUBLIC WORK OF IMPROVEMENT**

15 **Pub. Cont. Code §§ 41010-45090 (added). Public works contract remedies**

16 SEC. _____. Part 6 (commencing with Section 41010) is added to Division 2 of
17 the Public Contract Code, to read:

18 **PART 6. PUBLIC WORKS CONTRACT**
19 **REMEDIES**

20 **CHAPTER 1. DEFINITIONS**

21 **§ 41010. Application of definitions**

22 41010. Unless the provision or context otherwise requires, the definitions in this
23 chapter govern the construction of this part.

24 **Comment.** Section 41010 supersedes former Civil Code Section 3082.

25 **§ 41020. Claimant**

26 41020. "Claimant" means a person that gives a stop payment notice or asserts a
27 claim against a payment bond.

28 **Comment.** Section 41020 restates former Civil Code Section 3085, omitting as unnecessary
29 the reference to the claimant's "entitlement" and to the combination of remedies. For persons
30 having the right to give a stop payment notice or assert a claim against a payment bond, see
31 Section 42030 (who may use remedies).

32 See also Sections 41090 ("payment bond" defined), 41100 ("person" defined), 41150 ("stop
33 payment notice" defined).

1 **§ 41030. Design professional**

2 41030. “Design professional” means a certificated architect, registered
3 professional engineer, or licensed land surveyor that provides architectural,
4 engineering, or land surveying services pursuant to a public works contract.

5 **Comment.** Section 41030 is drawn from Civil Code Section 7010.

6 See also Sections 41100 (“person” defined), 41130 (“public works contract” defined).

7 **§ 41040. Direct contractor**

8 41040. “Direct contractor” means a person that has a direct contractual
9 relationship with a public entity. With respect to the amount due or to become due
10 to a direct contractor, the term includes the direct contractor’s assignee.

11 **Comment.** Section 41040 supersedes former Civil Code Section 3095 (“original contractor”).
12 A direct contractor is not limited to a builder, and may include a surveyor, engineer, material
13 supplier, artisan, or other person that contracts directly with the public entity.

14 The definition generalizes provisions of former Civil Code Section 3187 relating to payment of
15 the assignee of a direct contractor. See also Section 44340 (effect of assignment or garnishment).

16 See also Sections 41100 (“person” defined), 41120 (“public entity” defined).

17 **§ 41050. Express trust fund**

18 41050. “Express trust fund” means a laborers compensation fund to which a
19 portion of a laborer’s total compensation is to be paid pursuant to an employment
20 agreement or a collective bargaining agreement for the provision of benefits,
21 including, but not limited to, employer payments described in Section 1773.1 of
22 the Labor Code and implementing regulations.

23 **Comment.** Section 41050 continues a portion of former Civil Code Section 3111 without
24 substantive change.

25 See also Section 41080 (“laborers compensation fund” defined).

26 **§ 41060. Funds**

27 41060. “Funds” means warrant, check, money, or bonds (if bonds are to be
28 issued in payment of the public works contract).

29 **Comment.** Section 41060 is a new definition. It is included for drafting convenience. It
30 generalizes provisions of former Civil Code Sections 3186, 3187, and 3196.

31 See also Section 41130 (“public works contract” defined).

32 **§ 41070. Labor, service, equipment, or material**

33 41070. “Labor, service, equipment, or material” includes but is not limited to
34 labor, skills, services, material, supplies, equipment, appliances, transportation,
35 power, surveying, construction plans, and construction management provided for a
36 public works contract.

37 **Comment.** Section 41070 is a new definition. It is included for drafting convenience. The
38 phrase is intended to encompass all things of value provided for a public works contract, and
39 replaces various phrases used throughout the former law, including “labor or material,” “labor,
40 services, equipment, or materials,” “appliances, teams, or power,” “provisions, provender, or
41 other supplies,” and the like.

42 See also Section 41130 (“public works contract” defined).

1 **§ 41080. Laborers compensation fund**

2 41080. “Laborers compensation fund” means a person, including an express
3 trust fund, to which a portion of the compensation of a laborer is paid by
4 agreement with the laborer or the collective bargaining agent of the laborer.

5 **Comment.** Section 41080 continues the first sentence of former Civil Code Section 3089(b)
6 without substantive change. See also Civ. Code § 7070 (standing to enforce laborer’s rights).

7 See also Sections 41050 (“express trust fund” defined), 41100 (“person” defined).

8 **§ 41090. Payment bond**

9 41090. “Payment bond” means a bond given under any of the following
10 provisions:

11 (a) Section 7103.

12 (b) Chapter 5 (commencing with Section 45010).

13 (c) Another provision of this code that provides for a payment bond.

14 **Comment.** Section 41090 supersedes former Civil Code Section 3096.

15 **§ 41100. Person**

16 41100. “Person” means an individual, corporation, public entity, business trust,
17 estate, trust, partnership, limited liability company, association, or other entity.

18 **Comment.** Section 41100 is a new definition. It is included for drafting convenience.

19 See also Section 41120 (“public entity” defined).

20 **§ 41110. Preliminary notice**

21 41110. “Preliminary notice” means the notice required by Chapter 3
22 (commencing with Section 43010) as a prerequisite to use of the remedies
23 provided in this part.

24 **Comment.** Section 41110 supersedes former Civil Code Section 3098. The substantive
25 requirements for preliminary notice are relocated to Chapter 3 (commencing with Section 43010).

26 **§ 41120. Public entity**

27 41120. (a) “Public entity” has the meaning provided in Section 1100 and
28 includes all of the following:

29 (1) The Regents of the University of California.

30 (2) An officer authorized to act for a public entity.

31 (b) A reference in this part to a public entity means the public entity that
32 awarded the public works contract.

33 **Comment.** Subdivision (a) of Section 41120 restates former Civil Code Section 3099. Under
34 Section 1100, “public entity” means the state, county, city, city and county, district, public
35 authority, public agency, municipal corporation, or any other political subdivision or public
36 corporation in the state. This part does not apply to a public works contract governed by federal
37 law. See Section 42010 (application of part). The reference to an officer of the public entity is
38 included for drafting convenience. Cf. former Civ. Code §§ 3247, 3250, 3251 (public entity or
39 officer).

40 Subdivision (b) is new; it is intended for drafting convenience. Cf. former Civ. Code §§ 3247,
41 3250, 3251.

1 See also Section 41130 (“public works contract” defined).

2 **§ 41130. Public works contract**

3 41130. “Public works contract” has the meaning provided in Section 1101.

4 **Comment.** Section 41130 supersedes former Civil Code Section 3100 (“public work” defined).
5 Under Section 1101, “public works contract” means an agreement for the erection, construction,
6 alteration, repair, or improvement of any public structure, building, road, or other public
7 improvement of any kind. This part does not apply to a public works contract governed by federal
8 law. See Section 42010 (application of part).

9 **§ 41140. Site**

10 41140. “Site” means the property on which a public works contract is
11 performed.

12 **Comment.** Section 41140 restates former Civil Code Section 3101 to the extent it applied to a
13 public works contract.

14 See also Section 41130 (“public works contract” defined).

15 **§ 41150. Stop payment notice**

16 41150. “Stop payment notice” means a notice given under Chapter 4
17 (commencing with Section 44110).

18 **Comment.** Section 41150 supersedes former Civil Code Section 3103.

19 **§ 41160. Subcontractor**

20 41160. “Subcontractor” means a contractor that does not have a direct
21 contractual relationship with a public entity. The term includes a contractor that
22 has a contractual relationship with a direct contractor or with another
23 subcontractor.

24 **Comment.** The first sentence of Section 7044 continues former Section 3104 to the extent it
25 applied to a public works contract. The second sentence is new; it makes clear that the term
26 “subcontractor” includes a subcontractor below the first tier.

27 **Note.** We have added the second sentence to this section to make clear that the term
28 “subcontractor” includes a subcontractor below the first tier.

29 **CHAPTER 2. GENERAL PROVISIONS**

30 **Article 1. Miscellaneous Provisions**

31 **§ 42010. Application of part**

32 42010. (a) This part applies to a public works contract awarded by a public
33 entity.

34 (b) This part does not apply to any of the following:

35 (1) A public works contract governed by federal law.

36 (2) A transaction governed by Sections 20457 to 20464, inclusive.

37 **Comment.** Subdivision (a) of Section 42010 restates former Civil Code Sections 3100 and
38 3179.

1 Paragraph (1) of subdivision (b) is new.

2 Paragraph (2) of subdivision (b) restates former Civil Code Section 3266(b). This provision
3 updates the former cross-reference to Streets and Highways Code Sections 5290-5297, which
4 were repealed in 1982 when the Public Contract Code was created. See 1982 Cal. Stat. ch. 465, §
5 56. The repealed sections were superseded by Public Contract Code Sections 20457-20464. See
6 1982 Cal. Stat. ch. 465, § 11. The new sections apply to bonds in “street work” projects under
7 Division 2 (commencing with Section 1600) (general provisions) of the Public Contract Code.
8 See Pub. Cont. Code § 20457.

9 See also Sections 41120 (“public entity” defined), 41130 (“public works contract” defined).

10 **§ 42020. Relation to other statutes**

11 42020. (a) This part does not limit, and is not affected by, improvement security
12 provided under the Subdivision Map Act, Division 2 (commencing with Section
13 66410) of Title 7 of the Government Code.

14 (b) The Bond and Undertaking Law, Chapter 2 (commencing with Section
15 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, applies to a bond
16 given under this part.

17 **Comment.** Subdivision (a) of Section 42020 is new. It clarifies the interrelation between this
18 part and the Subdivision Map Act. For relevant provisions of that act, see Gov’t Code §§ 66499-
19 66499.10 (improvement security).

20 Subdivision (b) is new. It is a specific application of Code of Civil Procedure Section 995.020
21 (application of Bond and Undertaking Law).

22 **§ 42030. Who may use remedies**

23 42030. (a) Except as provided in subdivision (b), any of the following persons
24 that has not been paid in full may give a stop payment notice to the public entity or
25 assert a claim against a payment bond:

26 (1) A person that provides labor, service, equipment, or material for a public
27 works contract pursuant to an agreement with a direct contractor.

28 (2) An express trust fund, to the extent of the compensation agreed to be paid to
29 the express trust fund for labor on that public works contract only.

30 (3) A person described in Section 4107.7.

31 (b) A direct contractor may not give a stop payment notice or assert a claim
32 against a payment bond under this part.

33 **Comment.** Section 42030 restates former Civil Code Section 3181. The former references to
34 site improvement work and to provisions, provender, or other supplies are included within the
35 meaning of subdivision (a). See Section 41070 (“labor, service, equipment, or material” defined).

36 See also Sections 41040 (“direct contractor” defined), 41050 (“express trust fund” defined),
37 41070 (“labor, service, equipment, or material” defined), 41090 (“payment bond” defined), 41100
38 (“person” defined), 41120 (“public entity” defined), 41130 (“public works contract” defined),
39 41150 (“stop payment notice” defined).

40 **§ 42040. Jurisdiction and venue**

41 42040. The proper court for proceedings under this part is the superior court in
42 the county in which a public works contract, or part of it, is to be performed.

43 **Comment.** Section 42040 is a new provision included for drafting convenience. It generalizes
44 a number of provisions of former law.

1 See also Section 41130 (“public works contract” defined).

2 **§ 42050. Rules of practice**

3 42050. Except as otherwise provided in this part, Part 2 (commencing with
4 Section 307) of the Code of Civil Procedure provides the rules of practice in
5 proceedings under this part.

6 **Comment.** Section 42050 continues the first sentence of former Civil Code Section 3259
7 without substantive change. The second sentence of former Civil Code Section 3259 is not
8 continued; this part does not include special provisions relating to new trials or appeals.

9 **§ 42060. Written notice**

10 42060. Notice under this part shall be in writing.

11 **Comment.** Section 42060 generalizes various provisions of former law. See, e.g., former Civ.
12 Code §§ 3092 (notice of cessation), 3093 (notice of completion), 3098 (preliminary notice), 3103
13 (stop notice).

14 **§ 42070. Notice to public entity**

15 42070. Notice to a public entity shall be addressed to the public entity at the
16 office of the disbursing officer of the public entity or at another address specified
17 in the contract.

18 **Comment.** Section 42070 supersedes the third sentence of former Civil Code Section 3098(a)
19 (preliminary notice of public work). Notice under this part may be given by mail or personal
20 delivery as provided in Civil Code Section 7104 (manner of giving notice).

21 **§ 42080. Mailed notice**

22 42080. The following provisions apply to notice given by mail under this part:

23 (a) Notice shall be given by registered or certified mail or by another method of
24 delivery providing for overnight delivery.

25 (b) Notice is complete when deposited in the mail or with an express service
26 carrier in the manner provided in Section 1013 of the Code of Civil Procedure.

27 (c) Proof that the notice was given in the manner provided in this section shall
28 be made by (1) a return receipt or a photocopy of the record of delivery and receipt
29 maintained by the United States Postal Service, showing the date of delivery and
30 to whom delivered, or in the event of nondelivery, by the returned envelope itself
31 (2) proof of mailing certified by the United States Postal Service, or (3) a tracking
32 record or other documentation certified by an express service carrier showing
33 delivery of the notice.

34 **Comment.** Section 42080 is a new provision included for drafting convenience. It generalizes
35 a number of provisions of former law, expands the methods of proof to include a certification of
36 the mailing by the United States Postal Service, and expands the methods of giving notice to
37 include delivery by express service carrier.

1 **§ 42090. Agency**

2 42090. An act that may be done by or to a person under this part may be done by
3 or to the person's agent to the extent the act is within the scope of the agent's
4 authority.

5 **Comment.** Section 42090 generalizes a provision of former Civil Code Section 3103. It makes
6 clear that an agent's authority is limited to the scope of the agency. Thus, to the extent a direct
7 contractor is deemed to be the agent of the principal for the purpose of engaging a subcontractor,
8 the scope of the agency does not include other acts, such as compromise of litigation.

9 See also Section 41100 ("person" defined).

10 **§ 42100. Liability of surety**

11 42100. None of the following releases a surety from liability on a bond given
12 under this part:

13 (a) A change to a contract, plan, specification, or agreement for a public works
14 contract or for labor, service, equipment, or material provided for a public works
15 contract.

16 (b) A change to the terms of payment or an extension of the time for payment
17 for a public works contract.

18 (c) A rescission or attempted rescission of a contract, agreement, or bond.

19 (d) A condition precedent or subsequent in the bond purporting to limit the right
20 of recovery of a claimant otherwise entitled to recover pursuant to a contract,
21 agreement, or bond.

22 (e) In the case of a bond given for the benefit of claimants, the fraud of a person
23 other than the claimant seeking to recover on the bond.

24 **Comment.** Section 42100 restates former Civil Code Section 3225.

25 See also Sections 41020 ("claimant" defined), 41070 ("labor, service, equipment, or material"
26 defined), 41100 ("person" defined), 41130 ("public works contract" defined).

27 **Article 2. Completion**

28 **§ 42210. Completion (including acceptance and cessation)**

29 42210. For the purpose of this part, completion of a public works contract
30 occurs at the earliest of the following times:

31 (a) Acceptance of performance by the public entity.

32 (b) Cessation of labor for a continuous period of 30 days. This subdivision does
33 not apply to a contract awarded under the State Contract Act, Part 2 (commencing
34 with Section 10100).

35 **Comment.** Section 42210 restates former Civil Code Section 3086, to the extent it applied to a
36 public works contract. See also Section 42220 (notice of completion).

37 See also Section 41120 ("public entity" defined).

38 **Note.** The Commission seeks comment on whether the 30 day cessation of labor period is too
39 short. Should it be changed to 60 days for consistency with the rule applicable to a private work
40 of improvement?

1 **Comment.** Section 42310 continues the first and second sentences of former Civil Code
2 Section 3262(a) without substantive change, to the extent they related to a public works contract.
3 See Section 41020 (“claimant” defined).

4 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41040
5 (“public entity” defined).

6 **§ 42320. Waiver and release**

7 42320. A claimant’s waiver and release does not release the public entity or
8 surety on a payment bond from a claim unless both of the following conditions are
9 satisfied:

10 (a) The waiver and release is in substantially the form provided in this article
11 and is signed by the claimant.

12 (b) If the release is a conditional release, there is evidence of payment to the
13 claimant. Evidence of payment may be (1) the claimant’s endorsement on a single
14 or joint payee check that has been paid by the financial institution on which it was
15 drawn or (2) written acknowledgment of payment by the claimant.

16 **Comment.** Section 42320 continues the third and fourth sentences of former Civil Code
17 Section 3262(a) without substantive change, to the extent they related to a public works contract.
18 The waiver and release may be signed by the claimant’s agent. See Section 42090 (agency).

19 See also Sections 41020 (“claimant” defined), 41090 (“payment bond” defined), 41040
20 (“public entity” defined).

21 **§ 42330. Statement of claimant**

22 42330. An oral or written statement purporting to waive, release, impair or
23 otherwise adversely affect a claim is void and unenforceable and does not create
24 an estoppel or impairment of the claim unless either of the following conditions is
25 satisfied:

26 (1) The statement is pursuant to a waiver and release under this article.

27 (2) The claimant has actually received payment in full for the claim.

28 **Comment.** Section 42330 continues former Civil Code Section 3262(b) without substantive
29 change, to the extent it related to a public works contract.

30 See also Section 41020 (“claimant” defined).

31 **§ 42340. Reduction or release of stop payment notice**

32 42340. (a) A claimant may reduce the amount of, or release in its entirety, a stop
33 payment notice. The reduction or release shall be in writing and may be given in a
34 form other than a form of waiver and release prescribed in this article.

35 (b) A claimant’s reduction or release of a stop payment notice has the following
36 effect:

37 (1) The reduction or release releases the claimant’s right to enforce payment of
38 the claim stated in the notice to the extent of the reduction or release.

39 (2) The reduction or release releases the public entity from the obligation to
40 withhold funds pursuant to the notice to the extent of the reduction or release.

41 (3) The reduction or release does not preclude the claimant from giving a
42 subsequent stop payment notice that is timely and proper.

(4) The reduction or release does not release any right of the claimant other than the right to enforce payment of the claim stated in the stop payment notice to the extent of the reduction or release.

Comment. Section 42340 restates the second, third, and fourth sentences of subdivision (b) of former Civil Code Section 3262, to the extent they related to a public works contract.

See also Sections 41020 (“claimant” defined), 41100 (“person” defined), 41120 (“public entity” defined), 41150 (“stop payment notice” defined).

§ 42350. Accord and satisfaction or settlement agreement not affected

42350. This article does not affect the enforceability of either an accord and satisfaction concerning a good faith dispute or an agreement made in settlement of an action pending in court if the accord and satisfaction or agreement and settlement make specific reference to the claim.

Comment. Section 42350 continues former Civil Code Section 3262(c) without substantive change, to the extent it related to a public works contract.

§ 42360. Conditional waiver and release on progress payment

42360. If a claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be in substantially the following form:

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE. This document waives the claimant’s lien and other rights effective on receipt of payment. A person should not rely on this document unless satisfied that the claimant has received payment.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Public Entity: _____

Through Date: _____

Conditional Waiver and Release

This document waives and releases stop payment notice and payment bond rights the claimant has for labor, service, equipment, and material provided to the customer on this job through the date of this document. This document is effective only on the claimant’s receipt of payment from the financial institution on which the following check is drawn:

1 Maker of Check: _____
2 Amount of Check: \$ _____
3 Check Payable to: _____

4 **Exceptions**

5 This document does not affect any of the following:

- 6 (1) Retentions.
7 (2) Extras for which the claimant has not received payment.
8 (3) The following progress payments for which the claimant has previously given
9 a conditional waiver and release but has not received payment:

10 Date of waiver and release: _____
11 Amount remaining unpaid: \$ _____

- 12 (4) Contract rights, including (i) a right based on rescission, abandonment, or
13 breach of contract, and (ii) the right to recover compensation for labor, service,
14 equipment, or material not compensated by the payment.

15 **Signature**

16 Claimant's Signature: _____
17 Claimant's Title: _____

18

19 **Comment.** Section 42360 restates former Civil Code Section 3262(d)(1), to the extent it
20 related to a public works contract, with the addition of language relating to progress payments
21 covered by previous releases that have not been paid. The statutory form is recast for clarity.

22 See also Section 41020 ("claimant" defined).

23 **§ 42370. Unconditional waiver and release on progress payment**

24 42370. If the claimant is required to execute a waiver and release in exchange
25 for, or in order to induce payment of, a progress payment and the claimant asserts
26 in the waiver it has, in fact, been paid the progress payment, the waiver and release
27 shall be in substantially the following form:

28 UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

29 NOTICE TO CLAIMANT: This document waives and releases rights
30 unconditionally and states that you have been paid for giving up those rights. This
31 document is enforceable against you if you sign it, even if you have not been paid.

32 If you have not been paid, use a conditional waiver and release form.

33 **Identifying Information**

34 Name of Claimant: _____
35 Name of Customer: _____
36 Job Location: _____
37 Public Entity: _____
38 Through Date: _____

1 **Unconditional Waiver and Release**

2 This document waives and releases stop payment notice and payment bond rights
3 the claimant has for labor, service, equipment, and material provided to the
4 customer on this job through the date of this document. The claimant has received
5 the following payment:

6 Amount of payment: \$ _____

7 **Exceptions**

8 This document does not affect any of the following:

- 9 (1) Retentions.
- 10 (2) Extras for which the claimant has not received payment.
- 11 (3) Contract rights, including (i) a right based on rescission, abandonment, or
12 breach of contract, and (ii) the right to recover compensation for labor, service,
13 equipment, or material not compensated by the payment.

14 **Signature**

15 Claimant's Signature: _____

16 Claimant's Title: _____

17
18 **Comment.** Section 42370 continues former Civil Code Section 3262(d)(2) without substantive
19 change, to the extent it related to a public works contract. The statutory form is recast for clarity.
20 See also Section 41020 ("claimant" defined).

21 **§ 42380. Conditional waiver and release on final payment**

22 42380. If the claimant is required to execute a waiver and release in exchange
23 for, or in order to induce the payment of, a final payment and the claimant is not,
24 in fact, paid in exchange for the waiver and release or a single payee check or joint
25 payee check is given in exchange for the waiver and release, the waiver and
26 release shall be in substantially the following form:

27 **CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

28 **NOTICE.** This document waives the claimant's lien and other rights effective on
29 receipt of payment. A person should not rely on this document unless satisfied that
30 the claimant has received payment.

31 **Identifying Information**

32 Name of Claimant: _____

33 Name of Customer: _____

34 Job Location: _____

35 Public Entity: _____

36 Date: _____

37

1 **Conditional Waiver and Release**

2 This document waives and releases stop payment notice and payment bond rights
3 the claimant has for all labor, service, equipment, and material provided to the
4 customer on this job. This document is effective only on the claimant's receipt of
5 payment from the financial institution on which the following check is drawn:

6 Maker of Check: _____

7 Amount of Check: \$ _____

8 Check Payable to: _____

9 **Exceptions**

10 This document does not affect any of the following:

11 (1) Disputed claims for extras in the amount of \$ _____

12 (2) The following progress payments for which the claimant has previously given
13 a conditional waiver and release but has not received payment:

14 Date of waiver and release: _____

15 Amount remaining unpaid: \$ _____

16 **Signature**

17 Claimant's Signature: _____

18 Claimant's Title: _____

19
20 **Comment.** Section 42380 continues former Civil Code Section 3262(d)(3), to the extent it
21 related to a public works contract, with the addition of language relating to progress payments
22 covered by previous releases that have not been paid, and the addition of a line for identification
23 of the waivant's customer. The statutory form is recast for clarity.

24 See also Section 41020 ("claimant" defined).

25 **§ 42390. Unconditional waiver and release on final payment**

26 42390. If the claimant is required to execute a waiver and release in exchange
27 for, or in order to induce payment of, a final payment and the claimant asserts in
28 the waiver it has, in fact, been paid the final payment, the waiver and release shall
29 be in substantially the following form:

30 UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

31 NOTICE TO CLAIMANT: This document waives and releases rights
32 unconditionally and states that you have been paid for giving up those rights. This
33 document is enforceable against you if you sign it, even if you have not been paid.
34 If you have not been paid, use a conditional waiver and release form.

35 **Identifying Information**

36 Name of Claimant: _____

37 Name of Customer: _____

38 Job Location: _____

1 Public Entity: _____

2 Date: _____

3 **Unconditional Waiver and Release**

4 This document waives and releases stop payment notice and payment bond rights
5 the claimant has for all labor, service, equipment, and material provided to the
6 customer on this job. The claimant has been paid in full.

7 **Exceptions**

8 This document does not affect any of the following:

9 (1) Disputed claims for extras in the amount of \$ _____

10 **Signature**

11 Claimant's Signature: _____

12 Claimant's Title: _____

13

14 **Comment.** Section 42390 continues former Civil Code Section 3262(d)(4) without substantive
15 change, to the extent it related to a public works contract. The statutory form is recast for clarity.

16 See also Section 41020 ("claimant" defined).

17

CHAPTER 3. PRELIMINARY NOTICE

18 **§ 43010. Preliminary notice prerequisite to remedies**

19 43010. (a) Except as otherwise provided by statute, preliminary notice is a
20 necessary prerequisite to the validity of a stop payment notice or a claim against a
21 payment bond under this part.

22 (b) Preliminary notice is not required of a laborer or a laborers compensation
23 fund.

24 (c) Preliminary notice is not required of a claimant that has a direct contractual
25 relationship with the direct contractor.

26 **Comment.** Subdivision (a) of Section 43010 restates part of the introductory clause of former
27 Civil Code Section 3098. For a statutory exception to the preliminary notice requirement, see
28 Section 45070 (notice to principal and surety).

29 Subdivision (b) restates former Civil Code Section 3098(c).

30 Subdivision (c) restates a portion of former Civil Code Section 3098(a).

31 The transitional provision of former Civil Code Section 3098(e) is not continued due to lapse
32 of time.

33 See also Sections 41020 ("claimant" defined), 41040 ("direct contractor" defined), 41080
34 ("laborers compensation fund" defined), 41090 ("payment bond" defined), 41110 ("preliminary
35 notice" defined), 41150 ("stop payment notice" defined).

36 **§ 43020. Persons to be given preliminary notice**

37 43020. Before giving a stop payment notice or asserting a claim against a
38 payment bond, a claimant shall give preliminary notice to the public entity and the
39 direct contractor.

1 **Comment.** Section 43020 restates part of the introductory clause and subdivision (a) of former
2 Civil Code Section 3098. Repetitive detail is omitted, in reliance on defined terms and other
3 substantive provisions.

4 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41070
5 (“labor, service, equipment, or material” defined), 41090 (“payment bond” defined), 41110
6 (“preliminary notice” defined), 41120 (“public entity” defined), 41150 (“stop payment notice”
7 defined).

8 **§ 43030. Contents of preliminary notice**

9 43030. A preliminary notice shall state with substantial accuracy all of the
10 following:

11 (1) A general description of the labor, service, equipment, or material provided
12 or to be provided.

13 (2) The name and address of the person providing the labor, service, equipment,
14 or material.

15 (3) The name of the person that contracted for the labor, service, equipment, or
16 material.

17 (4) A description of the site sufficient for identification.

18 **Comment.** Section 43030 restates part of the first sentence of former Civil Code Section
19 3098(a), and revises it for conformity with the preliminary notice for private work.

20 See also Section 41070 (“labor, service, equipment, or material” defined), 41100 (“person”
21 defined), 41110 (“preliminary notice” defined), 41140 (“site” defined).

22 **§ 43040. Giving preliminary notice**

23 43040. (a) Preliminary notice shall be given by mail or personal delivery.

24 (b) Notice to a direct contractor shall be addressed to the contractor at any place
25 the contractor maintains an office or conducts business or at the contractor’s
26 residence.

27 (c) Notice to a public entity shall be addressed to the public entity as provided in
28 Section 42070.

29 **Comment.** Subdivision (a) of Section 43040 restates the second and fourth sentences of former
30 Civil Code Section 3098(a). See also Section 42080 (mailed notice).

31 Subdivision (b) restates the third sentence of former Civil Code Section 3098(a).

32 Subdivision (c) supersedes the fourth sentence of former Civil Code Section 3098(a). See
33 Section 42070 (notice to public entity).

34 See also Sections 41040 (“direct contractor” defined), 41110 (“preliminary notice” defined).

35 **§ 43050. Effect of preliminary notice**

36 43050. A claimant may give a stop payment notice or assert a claim against a
37 payment bond only for labor, service, equipment, or material provided within 20
38 days before giving preliminary notice and at any time thereafter.

39 **Comment.** Section 43050 restates parts of subdivisions (a) and (d) of former Civil Code
40 Section 3098.

41 See also Sections 41020 (“claimant” defined), 41070 (“labor, service, equipment, or material”
42 defined), 41090 (“payment bond” defined), 41110 (“preliminary notice” defined), 41150 (“stop
43 payment notice” defined).

1 **Note.** Although the language of this provision is radically simplified, it is believed to capture
2 the essence of existing law.

3 **§ 43060. Disciplinary action for failure to give notice**

4 43060. A licensed subcontractor is subject to disciplinary action under the
5 Contractors' State License Law, Chapter 9 (commencing with Section 7000) of
6 Division 3 of the Business and Professions Code, if all of the following conditions
7 are satisfied:

8 (a) The subcontractor does not pay all compensation due to a laborers
9 compensation fund.

10 (b) The subcontractor fails to give a required preliminary notice.

11 (c) The subcontractor's failure results in the laborers compensation fund filing a
12 stop payment notice or asserting a claim against a payment bond.

13 (d) The amount due the laborers compensation fund is not paid.

14 **Comment.** Section 43060 supersedes former Civil Code Section 3098(b); the provision
15 relating to disciplinary action if a subcontractor fails to give preliminary notice on a work of
16 improvement exceeding \$400, is not continued. Section 43060 is drawn from former Civil Code
17 Section 3097(h), relating to a private work of improvement.

18 See also Sections 41080 ("laborers compensation fund" defined), 41090 ("payment bond"
19 defined), 41110 ("preliminary notice" defined), 41150 ("stop payment notice" defined).

20 CHAPTER 4. STOP PAYMENT NOTICE

21 Article 1. General Provisions

22 **§ 44110. Stop payment notice exclusive remedy to reach construction funds**

23 44110. (a) A person may not assert a legal or equitable right in funds for
24 payment of construction costs, other than a right created by direct written contract
25 between the person and the holder of the funds, except as provided in this chapter.

26 (b) This chapter provides the exclusive remedy of a person that provides labor,
27 service, equipment, or material against funds for payment of construction costs.

28 **Comment.** Section 44110 restates former Civil Code Section 3264 to the extent it applied to a
29 public works contract. See Section 42010 (application of part). For a comparable provision
30 applicable to a private work, see Civ. Code § 7500.

31 See also Sections 41060 ("funds" defined), 41070 ("labor, service, equipment, or material"
32 defined), 41100 ("person" defined).

33 **§ 44120. Contents of stop payment notice**

34 44120. (a) A stop payment notice shall be signed and verified by the claimant
35 and shall state in general terms all of the following:

36 (1) The kind of labor, service, equipment, or material provided or agreed to be
37 provided by the claimant.

38 (2) The name of the person to or for which the labor, service, equipment, or
39 material was provided.

1 (3) The amount in value, as near as may be, of that already provided and of the
2 whole agreed to be provided.

3 (4) The name and address of the claimant.

4 (b) A stop payment notice is not invalid by reason of any defect in form if it is
5 sufficient to substantially inform the public entity of the information required.

6 **Comment.** Subdivision (a) of Section 44120 restates subdivisions (a)-(d) of former Civil Code
7 Section 3103. See also Section 42090 (agency).

8 Subdivision (b) continues the third sentence of the first unnumbered paragraph of former Civil
9 Code Section 3103.

10 See also Sections 41020 (“claimant” defined), 41070 (“labor, service, equipment, or material”
11 defined), 41100 (“person” defined), 41120 (“public entity” defined), 41150 (“stop payment
12 notice” defined).

13 **§ 44130. Giving of stop payment notice**

14 44130. A stop payment notice shall be given to the public entity by mailing or
15 personally delivering the notice to the following person:

16 (a) In the case of a public works contract of the state, the director of the
17 department that awarded the contract.

18 (b) In the case of a public works contract of a public entity other than the state,
19 the office of the controller, auditor, or other public disbursing officer whose duty it
20 is to make payment pursuant to the contract, or the commissioners, managers,
21 trustees, officers, board of supervisors, board of trustees, common council, or
22 other body by which the contract was awarded.

23 **Comment.** Subdivision (a) of Section 44130 restates the second sentence of the first
24 unnumbered paragraph of former Civil Code Section 3103.

25 Subdivision (b) restates the second unnumbered paragraph of former Civil Code Section 3103.
26 See also Section 42080 (mailed notice).

27 A claimant wishing to receive return notice of the time within which payment of the claim
28 stated in a stop payment notice must be enforced must pay the public entity ten dollars (\$10) at
29 the time of giving the stop payment notice. See Section 44170.

30 See also Sections 41100 (“person” defined), 41120 (“public entity” defined), 41130 (“public
31 works contract” defined), 41150 (“stop payment notice” defined).

32 **§ 44140. Time for giving notice**

33 44140. A stop payment notice is not effective unless given within 30 days after
34 recordation of a notice of completion or, if a notice of completion is not recorded,
35 within 90 days after completion.

36 **Comment.** Section 44140 restates former Civil Code Section 3184. The former statutory
37 references to “notice of cessation” and “notice of acceptance” are not continued; they are
38 subsumed within the notice of completion. See Sections 42210 (completion (including acceptance
39 and cessation)) and 42220 (notice of completion).

40 See also Section 41150 (“stop payment notice” defined).

41 **§ 44150. Duty to withhold funds**

42 44150. (a) The public entity shall, on receipt of a stop payment notice, withhold
43 from the direct contractor sufficient funds due or to become due to the direct

1 contractor to pay the claim stated in the stop payment notice and to provide for the
2 public entity's reasonable cost of any litigation pursuant to the stop payment
3 notice.

4 (b) The public entity may satisfy its duty under this section by refusing to
5 release funds held in escrow under Section 10263 or 22300.

6 **Comment.** Section 44150 restates former Civil Code Section 3186. See also Section 42090
7 (agency).

8 See also Sections 41040 ("direct contractor" defined), 41060 ("funds" defined), 41120 ("public
9 entity" defined), 41150 ("stop payment notice" defined).

10 **§ 44160. Payment notwithstanding stop payment notice**

11 44160. (a) This chapter does not prohibit payment of funds to a direct contractor
12 if a stop payment notice is not received before the disbursing officer actually
13 surrenders possession of the funds.

14 (b) This chapter does not prohibit payment of any amount due to a direct
15 contractor in excess of the amount necessary to pay the total amount of all claims
16 stated in stop payment notices received by the public entity at the time of payment
17 plus any interest and court costs that might reasonably be anticipated in connection
18 with the claims.

19 **Comment.** Section 44160 restates former Civil Code Section 3187. Authority in this section
20 for payment of a direct contractor includes payment of the direct contractor's assignee. See
21 Section 41040 ("direct contractor" defined).

22 See also Sections 41060 ("funds" defined), 41150 ("stop payment notice" defined).

23 **§ 44170. Notice to claimant**

24 44170. (a) Not later than 10 days after completion of a public works contract,
25 the public entity shall give notice to each claimant that has given a stop payment
26 notice of the time within which payment of the claim stated in a stop payment
27 notice must be enforced.

28 (b) Notice under this section shall be by personal delivery or by mail addressed
29 to the claimant at the address shown on the stop payment notice.

30 (c) A public entity need not give notice under this section unless the claimant
31 has paid the public entity ten dollars (\$10) at the time of giving the stop payment
32 notice.

33 **Comment.** Section 44170 restates former Civil Code Section 3185. See also Sections 42080
34 (mailed notice), 44420 (time for enforcement of payment of claim stated in stop payment notice).
35 The \$2 fee is increased to \$10 in recognition of the change in the value of the dollar since the
36 fee's enactment.

37 See also Sections 41020 ("claimant" defined), 41120 ("public entity" defined), 41130 ("public
38 works contract" defined), 41150 ("stop payment notice" defined).

39 **§ 44180. Release bond**

40 44180. (a) If the direct contractor or a subcontractor disputes the correctness,
41 validity, or enforceability of the claim stated a stop payment notice, the public
42 entity may, in its discretion, permit the direct contractor to give the public entity a

1 release bond. The bond shall be executed by an admitted surety insurer, in an
2 amount equal to 125 percent of the claim stated in the stop payment notice,
3 conditioned for the payment of any amount the claimant recovers in an action on
4 the claim, together with court costs if the claimant prevails.

5 (b) On receipt of a release bond, the public entity shall not withhold funds from
6 the direct contractor pursuant to the stop payment notice.

7 (c) The surety on a release bond is jointly and severally liable to the claimant
8 with the sureties on any payment bond given under Chapter 5 (commencing with
9 Section 45010).

10 **Comment.** Section 44180 restates former Civil Code Section 3196.

11 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41060
12 (“funds” defined), 41090 (“payment bond” defined), 41120 (“public entity” defined), 41150
13 (“stop payment notice” defined).

14 Article 2. Summary Proceeding for Release of Funds

15 § 44210. Grounds for summary proceeding

16 44210. A direct contractor may obtain release of funds withheld pursuant to a
17 stop payment notice under the summary proceeding provided in this article on any
18 of the following grounds:

19 (a) The claim on which the notice is based is not a type for which a stop
20 payment notice is authorized under this chapter.

21 (b) The claimant is not a person authorized under Section 42030 to give a stop
22 payment notice.

23 (c) The amount of the claim stated in the stop payment notice is excessive.

24 (d) There is no basis for the claim stated in the stop payment notice.

25 **Comment.** Section 44210 restates former Civil Code Section 3197.

26 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41060
27 (“funds” defined), 41100 (“person” defined), 41150 (“stop payment notice” defined).

28 § 44220. Contractor’s affidavit and demand for release

29 44220. The direct contractor shall serve on the public entity an affidavit,
30 together with a copy of the affidavit, that includes all of the following information:

31 (a) An allegation of the grounds for release of the funds and a statement of the
32 facts supporting the allegation.

33 (b) A demand for the release of all or the portion of the funds that are alleged to
34 be withheld improperly or in an excessive amount.

35 (c) A statement of the address of the contractor within the state for the purpose
36 of permitting service by mail on the contractor of any notice or document.

37 **Comment.** Section 44220 restates former Civil Code Section 3198. The grounds for release are
38 provided in Section 44210.

39 See also Sections 41040 (“direct contractor” defined), 41060 (“funds” defined), 41120 (“public
40 entity” defined).

1 **§ 44230. Notice to claimant**

2 44230. (a) The public entity shall serve on the claimant a copy of the direct
3 contractor’s affidavit, together with a notice stating that the public entity will
4 release the funds withheld, or the portion of the funds demanded, unless the
5 claimant serves on the public entity a counteraffidavit on or before the time stated
6 in the notice. The time stated in the notice shall be not less than 10 nor more than
7 20 days after service on the claimant of the copy of the affidavit.

8 (b) Service under this section shall be made either personally or by registered or
9 certified mail, addressed to the last known address of the claimant. Proof of
10 service shall be made by affidavit.

11 **Comment.** Section 44230 restates former Civil Code Section 3199. See also Section 42060
12 (written notice).

13 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41060
14 (“funds” defined), 41120 (“public entity” defined).

15 **§ 44240. Claimant’s counteraffidavit**

16 44240. (a) A claimant that contests the direct contractor’s affidavit shall serve
17 on the public entity a counteraffidavit alleging the details of the claim and
18 describing the specific basis on which the claimant contests or rebuts the
19 allegations of the contractor’s affidavit. The counteraffidavit shall be served
20 within the time stated in the public entity’s notice, together with proof of service
21 of a copy of the counteraffidavit on the direct contractor.

22 (b) If no counteraffidavit with proof of service is served on the public entity
23 within the time stated in the public entity’s notice, the public entity shall
24 immediately release the funds, or the portion of the funds demanded by the
25 affidavit, without further notice to the claimant, and the public entity is not liable
26 in any manner for their release.

27 (c) The public entity is not responsible for the validity of an affidavit or
28 counteraffidavit under this article.

29 **Comment.** Section 44240 restates former Civil Code Section 3200.

30 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41060
31 (“funds” defined), 41120 (“public entity” defined).

32 **§ 44250. Commencement of action**

33 44250. (a) If a counteraffidavit, together with proof of service, is served under
34 Section 44240, either the direct contractor or the claimant may commence an
35 action for a declaration of the rights of the parties.

36 (b) After commencement of the action, either the direct contractor or the
37 claimant may move the court for a determination of rights under the affidavit and
38 counteraffidavit. The party making the motion shall give not less than five days’
39 notice of the hearing to the public entity and to the other party.

40 (c) The court shall hear the motion within 15 days after the date of the motion,
41 unless the court continues the hearing for good cause.

1 **Comment.** Section 44250 restates former Civil Code Section 3201. See also Sections 42040
2 (jurisdiction and venue), 42060 (written notice).

3 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41120
4 (“public entity” defined).

5 **§ 44260. Pleadings and burden of proof**

6 44260. (a) The affidavit and counteraffidavit shall be filed with the court by the
7 public entity and shall constitute the pleadings, subject to the power of the court to
8 permit an amendment in the interest of justice. The affidavit of the direct
9 contractor shall be deemed controverted by the counteraffidavit of the claimant,
10 and both shall be received in evidence.

11 (b) At the hearing, the direct contractor has the burden of proof.

12 **Comment.** Section 44260 restates former Civil Code Section 3202.

13 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41120
14 (“public entity” defined).

15 **§ 44270. Court determination**

16 44270. (a) No findings are required in a summary proceeding under this article.

17 (b) If the hearing is before the court sitting without a jury and no evidence other
18 than the affidavit and counteraffidavit is offered, the court may, if satisfied that
19 sufficient facts are shown, make a determination on the basis of the affidavit and
20 counteraffidavit. If the court is not satisfied that sufficient facts are shown, the
21 court shall order the hearing continued for production of other evidence, oral or
22 documentary, or the filing of other affidavits and counteraffidavits.

23 (c) At the conclusion of the hearing, the court shall make an order determining
24 whether the demand for release is allowed. The court’s order is determinative of
25 the right of the claimant to have funds further withheld by the public entity.

26 (d) The direct contractor shall serve a copy of the court’s order on the public
27 entity.

28 **Comment.** Section 44270 restates former Civil Code Section 3203. Former Civil Code Section
29 3204 relating to jury trial is not continued; proceedings under this article are tried to the judge,
30 not to a jury.

31 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41060
32 (“funds” defined), 41120 (“public entity” defined).

33 **§ 44280. Summary determination not res judicata**

34 44280. A determination in a summary proceeding under this article is not res
35 judicata with respect to a right of action by the claimant against either the principal
36 or surety on a payment bond or with respect to a right of action against a party
37 personally liable to the claimant.

38 **Comment.** Section 44280 restates former Civil Code Section 3205. The former reference to a
39 “labor or material bond” is replaced by a reference to a payment bond.

40 See also Sections 41020 (“claimant” defined), 41090 (“payment bond” defined).

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Article 3. Distribution of Funds Withheld

§ 44310. Distribution of funds withheld pursuant to stop payment notice

44310. If funds withheld pursuant to a stop payment notice are insufficient to pay in full the claims of all persons that have given a stop payment notice, the funds shall be distributed among the claimants in the ratio that the claim of each bears to the aggregate of all claims for which a stop payment notice is given, without regard to the order in which the notices were given or enforcement actions were commenced.

Comment. Section 44310 restates former Civil Code Section 3190. Only valid claims, as determined in an enforcement action, are entitled to participate in the distribution. Cf. *Idaho Lumber Co. v. Northwestern S. & L. Ass'n*, 265 Cal. App. 2d 490, 71 Cal. Rptr. 422 (1968). The amount of the claim for which payment is required is determined under Article 4 (commencing with Section 40410) (enforcement of payment of claim stated in stop payment notice).

See also Sections 41020 (“claimant” defined), 41060 (“funds” defined), 41100 (“person” defined), 41150 (“stop payment notice” defined).

§ 44320. Stop payment notice remedy not exclusive

44320. Nothing in this chapter impairs the right of a claimant to recover from the direct contractor or the contractor’s sureties in an action on a payment bond under Chapter 5 (commencing with Section 45010) any deficit that remains unpaid after the distribution under Section 44310.

Comment. Section 44320 restates former Civil Code Section 3191.

See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41090 (“payment bond” defined).

§ 44330. Forfeiture for false notice

44330. A person that willfully gives a false stop payment notice to the public entity or that willfully includes in the notice labor, service, equipment, or material not provided for the public works contract for which the stop payment notice is given, forfeits all right to participate in the distribution under Section 44310.

Comment. Section 44330 restates former Civil Code Section 3192.

See also Sections 41070 (“labor, service, equipment, or material” defined), 41100 (“person” defined), 41120 (“public entity” defined), 41130 (“public works contract” defined), 41150 (“stop payment notice” defined).

§ 44340. Effect of assignment or garnishment

44340. (a) A stop payment notice takes priority over an assignment by a direct contractor of any amount due or to become due pursuant to a public works contract, including contract changes, whether made before or after the giving of a stop payment notice, and the assignment has no effect on the rights of the claimant.

(b) Any garnishment of an amount due or to become due pursuant to a public works contract by a creditor of a direct contractor under Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code

1 of Civil Procedure and any statutory lien on that amount is subordinate to the
2 rights of a claimant.

3 **Comment.** Section 44340 restates former Civil Code Section 3193.

4 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41150
5 (“stop payment notice” defined).

6 Article 4. Enforcement of Payment of Claim Stated in Stop Payment
7 Notice

8 **§ 44410. Prerequisites for enforcement of notice**

9 44410. (a) A claimant may not enforce payment of the claim stated in a stop
10 payment notice unless the claimant has complied with all of the following
11 conditions:

12 (1) The claimant has given preliminary notice to the extent required by Chapter
13 3 (commencing with Section 43010).

14 (2) The claimant has given the stop payment notice within the time provided in
15 Section 44140.

16 (b) The claim filing procedures of Part 3 (commencing with Section 900) of
17 Division 3.6 of Title 1 of the Government Code do not apply to an action under
18 this article.

19 **Comment.** Subdivision (a) of Section 44410 restates former Civil Code Section 3183.

20 Subdivision (b) restates former Civil Code Section 3265.

21 See also Sections 41020 (“claimant” defined), 41110 (“preliminary notice” defined), 41150
22 (“stop payment notice” defined).

23 **§ 44420. Time for enforcement of payment of claim stated in stop payment notice**

24 44420. (a) The claimant shall commence an action against the public entity and
25 the direct contractor to enforce payment of the claim stated in a stop payment
26 notice not earlier than 10 days after the date the claimant gives the stop payment
27 notice and not later than 90 days after expiration of the time within which a stop
28 payment notice must be given.

29 (b) An action under this section may not be brought to trial or judgment entered
30 before expiration of the time provided in subdivision (a).

31 (c) If a claimant does not commence an action to enforce payment of the claim
32 stated in a stop payment notice within the time provided in subdivision (a), the
33 notice ceases to be effective and the public entity shall release funds withheld
34 pursuant to the notice.

35 **Comment.** Section 44420 restates former Civil Code Section 3210. See also Section 44140
36 (time within which stop payment notice must be given).

37 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41060
38 (“funds” defined), 41120 (“public entity” defined), 41150 (“stop payment notice” defined).

1 commencement of work, give a payment bond to and approved by the public
2 entity.

3 (2) A public entity shall state in its call for bids that a payment bond is required
4 for a public works contract involving an expenditure in excess of twenty-five
5 thousand dollars (\$25,000).

6 (b) A payment bond given and approved under this section is sufficient to permit
7 performance of work pursuant to a public works contract that supplements the
8 contract for which the bond is given, if the requirement of a new bond is waived
9 by the public entity.

10 (c) For the purpose of this section, a design professional is not deemed a direct
11 contractor and is not required to give a payment bond.

12 **Comment.** Section 45010 restates former Civil Code Section 3247. The transitional provisions
13 of the former section are omitted due to lapse of time. Section 7103(d) defines “state entity” for
14 purposes of the payment bond requirement under that section.

15 See also Sections 41030 (“design professional” defined), 41040 (“direct contractor” defined),
16 41090 (“payment bond” defined), 41120 (“public entity” defined), 41130 (“public works
17 contract” defined).

18 **§ 45020. Consequences of failure to give bond**

19 45020. If a payment bond is not given and approved as required by statute:

20 (a) The public entity awarding the public works contract shall not audit, allow,
21 or pay a claim of the direct contractor pursuant to the contract.

22 (b) A claimant shall receive payment of a claim pursuant to a stop payment
23 notice under Chapter 4 (commencing with Section 44110).

24 **Comment.** Section 45020 restates former Civil Code Section 3251. The former operative date
25 provision is deleted due to lapse of time.

26 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41090
27 (“payment bond” defined), 41120 (“public entity” defined), 41150 (“stop payment notice”
28 defined).

29 **Note.** This section refers to a payment bond given and approved “as required by statute.” That
30 could include a payment bond under other provisions of the Public Contract Code, including the
31 State Contract Act. Is this provision overbroad?

32 **§ 45030. Bond requirements**

33 45030. (a) A payment bond shall be in an amount not less than one hundred
34 percent of the total amount payable pursuant to the public works contract. The
35 bond shall be in the form of a bond and not a deposit in lieu of bond.

36 (b) The payment bond shall provide that if the direct contractor or a
37 subcontractor fails to pay any of the following, the surety will pay the obligation
38 and, if an action is brought to enforce the liability on the bond, a reasonable
39 attorney’s fee, to be fixed by the court:

40 (1) A person authorized under Section 42030 to assert a claim against a payment
41 bond.

42 (2) Amounts due under the Unemployment Insurance Code with respect to work
43 or labor performed pursuant to the public works contract.

1 (3) Amounts required to be deducted, withheld, and paid over to the
2 Employment Development Department from the wages of employees of the
3 contractor and subcontractors under Section 13020 of the Unemployment
4 Insurance Code with respect to the work and labor.

5 (c) The payment bond shall by its terms inure to the benefit of any person
6 authorized under Section 42030 to assert a claim against a payment bond so as to
7 give a right of action to that person or that person's assigns in an action to enforce
8 the liability on the bond.

9 (d) The direct contractor may require that a subcontractor give a bond to
10 indemnify the direct contractor for any loss sustained by the direct contractor
11 because of any default of the subcontractor under this section.

12 **Comment.** Section 45030 restates former Civil Code Section 3248 and supersedes former
13 Civil Code Section 3096.

14 See also Sections 41040 ("direct contractor" defined), 41090 ("payment bond" defined), 41100
15 ("person" defined).

16 **§ 45040. Construction of bond**

17 45040. (a) A payment bond shall be construed most strongly against the surety
18 and in favor of the beneficiary.

19 (b) A surety is not released from liability to the beneficiary by reason of a
20 breach of the public works contract between the public entity and the direct
21 contractor or on the part of the beneficiary.

22 (c) The sole conditions of recovery on the bond are that the beneficiary is a
23 person authorized under Section 42030 to assert a claim against a payment bond
24 and has not been paid the full amount of the claim.

25 **Comment.** Section 45040 restates former Civil Code Section 3226.

26 See also Sections 41040 ("direct contractor" defined), 41090 ("payment bond" defined), 41100
27 ("person" defined), 41120 ("public entity" defined).

28 Cf. Code Civ. Proc. § 995.130 ("beneficiary" defined).

29 **§ 45050. Statute of limitations**

30 45050. A claimant may commence an action against a surety to enforce the
31 liability on a payment bond at any time after the claimant ceases to provide labor,
32 service, equipment, or material, but not later than six months after the period in
33 which a stop payment notice may be given under Section 44140.

34 **Comment.** Section 45050 restates former Civil Code Section 3249.

35 See also Sections 41020 ("claimant" defined), 41070 ("labor, service, equipment, or material"
36 defined), 41090 ("payment bond" defined), 41150 ("stop payment notice" defined).

37 **§ 45060. Notice required**

38 45060. A claimant may not enforce the liability on a payment bond unless the
39 claimant has given notice under one of the following provisions:

40 (a) Preliminary notice under Chapter 3 (commencing with Section 43010).

41 (b) Notice to the principal and surety under Section 45070.

1 **Comment.** Section 45060 supersedes former Civil Code Section 3252(a). The former
2 limitation to a contract entered into on or after January 1, 1995, is omitted due to lapse of time.

3 See also Sections 41020 (“claimant” defined), 41090 (“payment bond” defined), 41110
4 (“preliminary notice” defined).

5 **§ 45070. Notice to principal and surety**

6 45070. (a) Whether or not the claimant has given preliminary notice under
7 Chapter 3 (commencing with Section 43010), a claimant may enforce the liability
8 on a payment bond if the claimant gives the notice provided in this section to the
9 principal and surety within 15 days after recordation of a notice of completion or,
10 if a notice of completion is not recorded, within 75 days after completion.

11 (b) Notice to the principal and surety shall include all of the following
12 information:

13 (1) The kind of labor, service, equipment, or material provided or to be provided
14 by the claimant.

15 (2) The name of the person to or for which the labor, service, equipment, or
16 material was provided.

17 (3) A statement of the claimant’s demand, after deducting all just credits and
18 offsets, for the labor, service, equipment, or material already provided and for the
19 whole amount agreed to be provided.

20 (c) Notice shall be given by mail, personal delivery, or service in the manner
21 provided by law for the service of a summons in a civil action.

22 (d) Notice given by mail shall be at the address provided in the bond for service
23 of notices, papers, and other documents.

24 **Comment.** Subdivision (a) of Section 45070 restates former Civil Code Section 3252. See also
25 42210 (completion (including acceptance and cessation)).

26 Subdivisions (b)-(d) restate former Civil Code Section 3227, except that mailed notice to the
27 principal or surety on a bond must be given at the address specified in the bond. See Code Civ.
28 Proc. § 995.320. See also Sections 42060 (written notice), 42080 (mailed notice).

29 See also Sections 41020 (“claimant” defined), 41070 (“labor, service, equipment, or material”
30 defined), 41090 (“payment bond” defined), 41100 (“person” defined), 41110 (“preliminary
31 notice” defined), 41130 (“public works contract” defined).

32 Cf. Code Civ. Proc. §§ 995.130 (“beneficiary” defined), 995.170 (“principal” defined).

33 **§ 45080. Action on bond**

34 45080. (a) A claimant may maintain an action to enforce the liability of a surety
35 on a payment bond whether or not the claimant has given the public entity a stop
36 payment notice.

37 (b) A claimant may maintain an action to enforce the liability on the bond
38 separately from and without commencement of an action against the public entity.

39 (c) In an action to enforce the liability on the bond, the court shall award the
40 prevailing party a reasonable attorney’s fee.

41 **Comment.** Section 45080 restates former Civil Code Section 3250. The provision that a
42 reasonable attorney’s fee is “to be taxed as costs” is deleted as surplus. See Code Civ. Proc. §
43 1033.5(a)(10)(B) (attorney’s fee allowable as costs). See also Section 42050 (rules of practice).

1 See also Sections 41020 (“claimant” defined), 41090 (“payment bond” defined), 41120
2 (“public entity” defined), 41150 (“stop payment notice” defined).

3 **§ 45090. Limitation on chapter**

4 45090. (a) A claimant does not have a right to recover on a payment bond unless
5 the claimant provided labor, service, equipment, or material to the direct
6 contractor or one of the direct contractor’s subcontractors pursuant to a public
7 works contract.

8 (b) Nothing in this section affects the stop payment notice rights of, and relative
9 priorities among, design professionals.

10 **Comment.** Section 45090 restates former Civil Code Section 3267. This section omits the
11 reference in former law to holders of secured interests in the land; although the relevance of that
12 provision to a public works contract is limited, this section is not intended to affect priorities
13 among those interests to the extent they may exist.

14 See also Sections 41020 (“claimant” defined), 41030 (“design professional” defined), 41040
15 (“direct contractor” defined), 41070 (“labor, service, equipment, or material” defined), 41090
16 (“payment bond” defined), 41130 (“public works contract” defined), 41150 (“stop payment
17 notice” defined).

18 **Operative Date and Transitional Provision**

19 SEC. _____. (a) This act is operative January 1, 2009.

20 (b) Except as otherwise provided in this section, this act applies to a contract for
21 a work of improvement executed before, on, or after the operative date.

22 (c) The effectiveness of a notice given, or other action taken, before the
23 operative date is governed by the applicable law in effect before the operative date
24 and not by this act.

25 **CONFORMING REVISIONS**

26 **BUSINESS AND PROFESSIONS CODE**

27 **Bus. & Prof. Code § 7034 (amended). Prohibited contract clauses**

28 SEC. _____. Section 7034 of the Business and Professions Code is amended to
29 read:

30 7034. (a) No contractor who is required to be licensed under this chapter shall
31 insert in any contract, or be a party, with a subcontractor who is licensed under
32 this chapter to any contract which contains, a provision, clause, covenant, or
33 agreement which is void or unenforceable under Section 2782 of the Civil Code.

34 (b) No contractor who is required to be licensed under this chapter shall require
35 a waiver of lien rights from any subcontractor, employee, or supplier in violation
36 of Section ~~3262~~ 7160 of the Civil Code or Section 42310 of the Public Contract
37 Code.

38 **Comment.** Section 7034 is amended to correct a cross-reference.

1 **Bus. & Prof. Code § 7071.5 (amended). Contractor’s bond**

2 SEC. _____. Section 7071.5 of the Business and Professions Code is amended to
3 read:

4 7071.5. The contractor’s bond required by this article shall be executed by an
5 admitted surety in favor of the State of California, in a form acceptable to the
6 registrar and filed with the registrar by the licensee or applicant. The contractor’s
7 bond shall be for the benefit of the following:

8 (a) Any homeowner contracting for home improvement upon the homeowner’s
9 personal family residence damaged as a result of a violation of this chapter by the
10 licensee.

11 (b) Any person damaged as a result of a willful and deliberate violation of this
12 chapter by the licensee, or by the fraud of the licensee in the execution or
13 performance of a construction contract.

14 (c) Any employee of the licensee damaged by the licensee’s failure to pay
15 wages.

16 (d) Any person or entity, including an express trust fund described in Section
17 ~~3114~~ 7014 of the Civil Code or Section 41050 of the Public Contract Code, to
18 whom a portion of the compensation of an employee of a licensee is paid by
19 agreement with that employee or the collective bargaining agent of that employee,
20 damaged as the result of the licensee’s failure to pay fringe benefits for its
21 employees, including, but not limited to, employer payments described in Section
22 1773.1 of the Labor Code and regulations thereunder (without regard to whether
23 the work was performed on a private or public work). Damage to an express trust
24 fund is limited to actual employer payments required to be made on behalf of
25 employees of the licensee, as part of the overall compensation of those employees,
26 which the licensee fails to pay.

27 **Comment.** Section 7071.5 is amended to correct a cross-reference.

28 **Bus. & Prof. Code § 7071.10 (amended). Qualifying individual’s bond**

29 SEC. _____. Section 7071.10 of the Business and Professions Code is amended
30 to read:

31 7071.10. (a) The qualifying individual’s bond required by this article shall be
32 executed by an admitted surety insurer in favor of the State of California, in a form
33 acceptable to the registrar and filed with the registrar by the qualifying individual.
34 The qualifying individual’s bond shall be for the benefit of the following persons:

35 (1) Any homeowner contracting for home improvement upon the homeowner’s
36 personal family residence damaged as a result of a violation of this chapter by the
37 licensee.

38 (2) Any person damaged as a result of a willful and deliberate violation of this
39 chapter by the licensee, or by the fraud of the licensee in the execution or
40 performance of a construction contract.

41 (3) Any employee of the licensee damaged by the licensee’s failure to pay
42 wages.

1 (4) Any person or entity, including an express trust fund described in Section
2 ~~3111 7014~~ of the Civil Code or Section 41050 of the Public Contract Code, to
3 whom a portion of the compensation of an employee of a licensee is paid by
4 agreement with that employee or the collective bargaining agent of that employee,
5 that is damaged as the result of the licensee's failure to pay fringe benefits for its
6 employees including, but not limited to, employer payments described in Section
7 1773.1 of the Labor Code and regulations adopted thereunder (without regard to
8 whether the work was performed on a public or private work). Damage to an
9 express trust fund is limited to employer payments required to be made on behalf
10 of employees of the licensee, as part of the overall compensation of those
11 employees, which the licensee fails to pay.

12 (b) The qualifying individual's bond shall not be required in addition to the
13 contractor's bond when the qualifying individual is himself or herself the
14 proprietor under subdivision (a) or a general partner under subdivision (b) of
15 Section 7068.

16 **Comment.** Section 7071.10 is amended to correct a cross-reference.

17 **Bus. & Prof. Code § 7159 (amended). Home improvement contract**

18 SEC. _____. Section 7159 of the Business and Professions Code is amended to
19 read:

20 7159. (a)(1) This section identifies the projects for which a home improvement
21 contract is required, outlines the contract requirements and lists the items that shall
22 be included in the contract, or may be provided as an attachment.

23 (2) This section does not apply to service and repair contracts which are subject
24 to Section 7159.10, provided the contract for the applicable services complies with
25 Sections 7159.10 to 7159.14, inclusive.

26 (3) Failure by the licensee, his or her agent or salesperson, or by a person subject
27 to be licensed under this chapter, to provide the specified information, notices, and
28 disclosures in the contract, or to otherwise fail to comply with any provision of
29 this section, is cause for discipline.

30 (b) For purposes of this section, "home improvement contract" means an
31 agreement, whether oral or written, or contained in one or more documents,
32 between a contractor and an owner or between a contractor and a tenant,
33 regardless of the number of residence or dwelling units contained in the building
34 in which the tenant resides, if the work is to be performed in, to, or upon the
35 residence or dwelling unit of the tenant, for the performance of a home
36 improvement, as defined in Section 7151, and includes all labor, services, and
37 materials to be furnished and performed thereunder, if the aggregate contract price
38 specified in one or more improvement contracts, including all labor, services, and
39 materials to be furnished by the contractor, exceeds five hundred dollars (\$500).
40 "Home improvement contract" also means an agreement, whether oral or written,
41 or contained in one or more documents, between a salesperson, whether or not he
42 or she is a home improvement salesperson, and an owner or a tenant, regardless of

1 the number of residence or dwelling units contained in the building in which the
2 tenant resides, which provides for the sale, installation, or furnishing of home
3 improvement goods or services.

4 (c) In addition to the specific requirements listed under this section, every home
5 improvement contract and any person subject to licensure under this chapter or his
6 or her agent or salesperson shall comply with all of the following:

7 (1) The writing shall be legible.

8 (2) Any printed form shall be readable. Unless a larger typeface is specified in
9 this article, text in any printed form shall be in at least 10-point typeface and the
10 headings shall be in at least 10-point boldface type.

11 (3)(A) Before any work is started, the contractor shall give the buyer a copy of
12 the contract signed and dated by both the contractor and the buyer. The buyer's
13 receipt of the copy of the contract initiates the buyer's rights to cancel the contract
14 pursuant to Sections 1689.5 to 1689.14, inclusive, of the Civil Code.

15 (B) The contract shall contain on the first page, in a typeface no smaller than
16 that generally used in the body of the document, both of the following:

17 (i) The date the buyer signed the contract.

18 (ii) The name and address of the contractor to which the applicable "Notice of
19 Cancellation" is to be mailed, immediately preceded by a statement advising the
20 buyer that the "Notice of Cancellation" may be sent to the contractor at the address
21 noted on the contract.

22 (4) A statement that, upon satisfactory payment being made for any portion of
23 the work performed, the contractor shall, prior to any further payment being made,
24 furnish to the person contracting for the home improvement or swimming pool
25 work a full and unconditional release from any claim or mechanic's lien pursuant
26 to Section ~~3114~~ 7172 of the Civil Code for that portion of the work for which
27 payment has been made.

28 (5) A change-order form for changes or extra work shall be incorporated into the
29 contract and shall become part of the contract only if it is in writing and signed by
30 the parties prior to the commencement of any work covered by a change order.

31 (6) The contract shall contain, in close proximity to the signatures of the owner
32 and contractor, a notice stating that the owner or tenant has the right to require the
33 contractor to have a performance and payment bond.

34 (7) If the contract provides for a contractor to furnish joint control, the
35 contractor shall not have any financial or other interest in the joint control.

36 (8) The provisions of this section are not exclusive and do not relieve the
37 contractor from compliance with any other applicable provision of law.

38 (d) A home improvement contract and any changes to the contract, shall be in
39 writing and signed by the parties to the contract prior to the commencement of any
40 work covered by the contract or applicable change order, and shall include or
41 comply with all of the following:

42 (1) The name, business address, and license number of the contractor.

1 (2) If applicable, the name and registration number of the home improvement
2 salesperson that solicited or negotiated the contract.

3 (3) The following heading on the contract form that identifies the type of
4 contract in at least 10-point boldface type: “Home Improvement.”

5 (4) The following statement in at least 12-point boldface type: “You are entitled
6 to a completely filled in copy of this agreement, signed by both you and the
7 contractor, before any work may be started.”

8 (5) The heading: “Contract Price,” followed by the amount of the contract in
9 dollars and cents.

10 (6) If a finance charge will be charged, the heading: “Finance Charge,” followed
11 by the amount in dollars and cents. The finance charge is to be set out separately
12 from the contract amount.

13 (7) The heading: “Description of the Project and Description of the Significant
14 Materials to be Used and Equipment to be Installed,” followed by a description of
15 the project and a description of the significant materials to be used and equipment
16 to be installed. For swimming pools, the project description required under this
17 paragraph also shall include a plan and scale drawing showing the shape, size,
18 dimensions, and the construction and equipment specifications.

19 (8) If a down payment will be charged, the details of the down payment shall be
20 expressed in substantially the following form, and shall include the text of the
21 notice as specified in subparagraph (C):

22 (A) The heading: “Down Payment.”

23 (B) A space where the actual down payment appears.

24 (C) The following statement in at least 12-point boldface type:

25 **“THE DOWN PAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF**
26 **THE CONTRACT PRICE, WHICHEVER IS LESS.”**

27 (9) If any payments, other than the down payment, is are to be made before the
28 project is completed, the details of these payments, known as progress payments,
29 shall be expressed in substantially the following form, and shall include the text of
30 the statement as specified in subparagraph (C):

31 (A) A schedule of progress payments shall be preceded by the heading:
32 “Schedule of Progress Payments.”

33 (B) Each progress payment shall be stated in dollars and cents and specifically
34 reference the amount of work or services to be performed and any materials and
35 equipment to be supplied.

36 (C) The section of the contract reserved for the progress payments shall include
37 the following statement in at least 12-point boldface type:

38 **“The schedule of progress payments must specifically describe each phase of**
39 **work, including the type and amount of work or services scheduled to be supplied**
40 **in each phase, along with the amount of each proposed progress payment. IT IS**
41 **AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR**
42 **WORK NOT YET COMPLETED, OR FOR MATERIALS NOT YET**

1 DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A
2 DOWNPAYMENT.”

3 (10) The contract shall address the commencement of work to be performed in
4 substantially the following form:

5 (A) A statement that describes what constitutes substantial commencement of
6 work under the contract.

7 (B) The heading: “Approximate Start Date.”

8 (C) The approximate date on which work will be commenced.

9 (11) The estimated completion date of the work shall be referenced in the
10 contract in substantially the following form:

11 (A) The heading: “Approximate Completion Date.”

12 (B) The approximate date of completion.

13 (12) If applicable, the heading: “List of Documents to be Incorporated into the
14 Contract,” followed by the list of documents incorporated into the contract.

15 (13) The heading: “Note about Extra Work and Change Orders,” followed by
16 the following statement:

17 “Extra Work and Change Orders become part of the contract once the order is
18 prepared in writing and signed by the parties prior to the commencement of any
19 work covered by the new change order. The order must describe the scope of the
20 extra work or change, the cost to be added or subtracted from the contract, and the
21 effect the order will have on the schedule of progress payments.”

22 (e) All of the following notices shall be provided to the owner as part of the
23 contract form as specified or, if otherwise authorized under this subdivision, may
24 be provided as an attachment to the contract:

25 (1) A notice concerning commercial general liability insurance. This notice may
26 be provided as an attachment to the contract if the contract includes the following
27 statement: “A notice concerning commercial general liability insurance is attached
28 to this contract.” The notice shall include the heading “Commercial General
29 Liability Insurance (CGL),” followed by whichever of the following statements is
30 both relevant and correct:

31 (A) “(The name on the license or ‘This contractor’) does not carry commercial
32 general liability insurance.”

33 (B) “(The name on the license or ‘This contractor’) carries commercial general
34 liability insurance written by (the insurance company). You may call the
35 (insurance company) at _____ to check the contractor’s insurance
36 coverage.”

37 (C) “(The name on the license or ‘This contractor’) is self-insured.”

38 (2) A notice concerning workers’ compensation insurance. This notice may be
39 provided as an attachment to the contract if the contract includes the statement: “A
40 notice concerning workers’ compensation insurance is attached to this contract.”
41 The notice shall include the heading “Workers’ Compensation Insurance”
42 followed by whichever of the following statements is correct:

1 (A) “(The name on the license or ‘This contractor’) has no employees and is
2 exempt from workers’ compensation requirements.”

3 (B) “(The name on the license or ‘This contractor’) carries workers’
4 compensation insurance for all employees.”

5 (3) A notice that provides the buyer with the following information about the
6 performance of extra or change-order work:

7 (A) A statement that the buyer may not require a contractor to perform extra or
8 change-order work without providing written authorization prior to the
9 commencement of any work covered by the new change order.

10 (B) A statement informing the buyer that extra work or a change order is not
11 enforceable against a buyer unless the change order also identifies all of the
12 following in writing prior to the commencement of any work covered by the new
13 change order:

14 (i) The scope of work encompassed by the order.

15 (ii) The amount to be added or subtracted from the contract.

16 (iii) The effect the order will make in the progress payments or the completion
17 date.

18 (C) A statement informing the buyer that the contractor’s failure to comply with
19 the requirements of this paragraph does not preclude the recovery of compensation
20 for work performed based upon legal or equitable remedies designed to prevent
21 unjust enrichment.

22 (4) A notice with the heading “Mechanics’ Lien Warning” written as follows:

23 “MECHANICS LIEN WARNING:

24 Anyone who helps improve your property, but who is not paid, may record what
25 is called a mechanics’ lien on your property. A mechanics’ lien is a claim, like a
26 mortgage or home equity loan, made against your property and recorded with the
27 county recorder.

28 Even if you pay your contractor in full, unpaid subcontractors, suppliers, and
29 laborers who helped to improve your property may record mechanics’ liens and
30 sue you in court to foreclose the lien. If a court finds the lien is valid, you could be
31 forced to pay twice or have a court officer sell your home to pay the lien. Liens
32 can also affect your credit.

33 To preserve their right to record a lien, each subcontractor and material supplier
34 must provide you with a document called a ‘~~20-day~~ Preliminary Notice.’ This
35 notice is not a lien. The purpose of the notice is to let you know that the person
36 who sends you the notice has the right to record a lien on your property if he or
37 she is not paid.

38 BE CAREFUL. The Preliminary Notice can be sent up to 20 days after the
39 subcontractor starts work or the supplier provides material. This can be a big
40 problem if you pay your contractor before you have received the Preliminary
41 Notices.

1 You will not get Preliminary Notices from your prime contractor or other
2 persons you contract with directly or from laborers who work on your project. The
3 law assumes that you already know they are improving your property.

4 **PROTECT YOURSELF FROM LIENS.** You can protect yourself from liens by
5 getting a list from your contractor of all the subcontractors and material suppliers
6 that work on your project. Find out from your contractor when these
7 subcontractors started work and when these suppliers delivered goods or materials.
8 Then wait 20 days, paying attention to the Preliminary Notices you receive.

9 **PAY WITH JOINT CHECKS.** One way to protect yourself is to pay with a joint
10 check. When your contractor tells you it is time to pay for the work of a
11 subcontractor or supplier who has provided you with a Preliminary Notice, write a
12 joint check payable to both the contractor and the subcontractor or material
13 supplier.

14 For other ways to prevent liens, visit CSLB's Web site at www.cslb.ca.gov or
15 call CSLB at 800-321-CSLB (2752).

16 **REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN**
17 **PLACED ON YOUR HOME.** This can mean that you may have to pay twice, or
18 face the forced sale of your home to pay what you owe.”

19 (5) The following notice shall be provided in at least 12-point typeface:
20 “Information about the Contractors’ State License Board (CSLB): CSLB is the
21 state consumer protection agency that licenses and regulates construction
22 contractors.

23 Contact CSLB for information about the licensed contractor you are
24 considering, including information about disclosable complaints, disciplinary
25 actions and civil judgments that are reported to CSLB.

26 Use only licensed contractors. If you file a complaint against a licensed
27 contractor within the legal deadline (usually four years), CSLB has authority to
28 investigate the complaint. If you use an unlicensed contractor, CSLB may not be
29 able to help you resolve your complaint. Your only remedy may be in civil court,
30 and you may be liable for damages arising out of any injuries to the unlicensed
31 contractor or the unlicensed contractor’s employees.

32 For more information:

33 Visit CSLB’s Web site at www.cslb.ca.gov

34 Call CSLB at 800-321-CSLB (2752)

35 Write CSLB at P.O. Box 26000, Sacramento, CA 95826.”

36 (6)(A) The notice set forth in subparagraph (B) and entitled “Three-Day Right to
37 Cancel,” shall be provided to the buyer unless the contract is:

38 (i) Negotiated at the contractor’s place of business.

39 (ii) Subject to the “Seven-Day Right to Cancel,” as set forth in paragraph (8).

40 (iii) Subject to licensure under the Alarm Company Act (Chapter 11.6
41 (commencing with Section 7590)), provided the alarm company licensee complies
42 with Sections 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

43 (B) “Three-Day Right to Cancel

1 “You, the buyer, have the right to cancel this contract within three business
2 days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice
3 to the contractor at the contractor’s place of business by midnight of the third
4 business day after you received a signed and dated copy of the contract that
5 includes this notice. Include your name, your address, and the date you received
6 the signed copy of the contract and this notice.

7 If you cancel, the contractor must return to you anything you paid within 10
8 days of receiving the notice of cancellation. For your part, you must make
9 available to the contractor at your residence, in substantially as good condition as
10 you received it, any goods delivered to you under this contract or sale. Or, you
11 may, if you wish, comply with the contractor’s instructions on how to return the
12 goods at the contractor’s expense and risk. If you do make the goods available to
13 the contractor and the contractor does not pick them up within 20 days of the date
14 of your notice of cancellation, you may keep them without any further obligation.
15 If you fail to make the goods available to the contractor, or if you agree to return
16 the goods to the contractor and fail to do so, then you remain liable for
17 performance of all obligations under the contract.”

18 (C) The “Three-Day Right to Cancel” notice required by this paragraph shall
19 comply with all of the following:

20 (i) The text of the notice is at least 12-point boldface type.

21 (ii) The notice is in immediate proximity to a space reserved for the owner’s
22 signature.

23 (iii) The owner acknowledges receipt of the notice by signing and dating the
24 notice form in the signature space.

25 (iv) The notice is written in the same language, e.g., Spanish, as that principally
26 used in any oral sales presentation.

27 (v) The notice may be attached to the contract if the contract includes, in at least
28 12-point boldface type, a checkbox with the following statement: “The law
29 requires that the contractor give you a notice explaining your right to cancel.
30 Initial the checkbox if the contractor has given you a ‘Notice of the Three-Day
31 Right to Cancel.’”

32 (vi) The notice shall be accompanied by a completed form in duplicate,
33 captioned “Notice of Cancellation,” which shall also be attached to the agreement
34 or offer to purchase and be easily detachable, and which shall contain the
35 following statement written in the same language, e.g., Spanish, as used in the
36 contract:

37 “Notice of Cancellation”
38 /enter date of transaction/
39 _____

40 (Date)

41 “You may cancel this transaction, without any penalty or obligation, within
42 three business days from the above date.

1 If you cancel, any property traded in, any payments made by you under the
2 contract or sale, and any negotiable instrument executed by you will be returned
3 within 10 days following receipt by the seller of your cancellation notice, and any
4 security interest arising out of the transaction will be canceled.

5 If you cancel, you must make available to the seller at your residence, in
6 substantially as good condition as when received, any goods delivered to you
7 under this contract or sale, or you may, if you wish, comply with the instructions
8 of the seller regarding the return shipment of the goods at the seller's expense and
9 risk.

10 If you do make the goods available to the seller and the seller does not pick them
11 up within 20 days of the date of your notice of cancellation, you may retain or
12 dispose of the goods without any further obligation. If you fail to make the goods
13 available to the seller, or if you agree to return the goods to the seller and fail to do
14 so, then you remain liable for performance of all obligations under the contract.”

15 To cancel this transaction, mail or deliver a signed and dated copy of this
16 cancellation notice, or any other written notice, or send a telegram to

17 _____,

18 /name of seller/

19 at _____

20 /address of seller's place of business/

21 not later than midnight of _____.

22 (Date)

23 I hereby cancel this transaction. _

24 (Date)

25 _____

26 (Buyer's signature)

27 (7)(A) The following notice entitled “Seven-Day Right to Cancel” shall be
28 provided to the buyer for any contract that is written for the repair or restoration of
29 residential premises damaged by any sudden or catastrophic event for which a
30 state of emergency has been declared by the President of the United States or the
31 Governor, or for which a local emergency has been declared by the executive
32 officer or governing body of any city, county, or city and county:

33 “Seven-Day Right to Cancel

34 You, the buyer, have the right to cancel this contract within seven business days.
35 You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the
36 contractor at the contractor's place of business by midnight of the seventh business
37 day after you received a signed and dated copy of the contract that includes this
38 notice. Include your name, your address, and the date you received the signed
39 copy of the contract and this notice.

40 If you cancel, the contractor must return to you anything you paid within 10
41 days of receiving the notice of cancellation. For your part, you must make
42 available to the contractor at your residence, in substantially as good condition as
43 you received it, any goods delivered to you under this contract or sale. Or, you

1 may, if you wish, comply with the contractor's instructions on how to return the
2 goods at the contractor's expense and risk. If you do make the goods available to
3 the contractor and the contractor does not pick them up within 20 days of the date
4 of your notice of cancellation, you may keep them without any further obligation.
5 If you fail to make the goods available to the contractor, or if you agree to return
6 the goods to the contractor and fail to do so, then you remain liable for
7 performance of all obligations under the contract."

8 (B) The "Seven-Day Right to Cancel" notice required by this subdivision shall
9 comply with all of the following:

10 (i) The text of the notice is at least 12-point boldface type.

11 (ii) The notice is in immediate proximity to a space reserved for the owner's
12 signature.

13 (iii) The owner acknowledges receipt of the notice by signing and dating the
14 notice form in the signature space.

15 (iv) The notice is written in the same language, e.g., Spanish, as that principally
16 used in any oral sales presentation.

17 (v) The notice may be attached to the contract if the contract includes, in at least
18 12-point boldface type, a checkbox with the following statement: "The law
19 requires that the contractor give you a notice explaining your right to cancel.
20 Initial the checkbox if the contractor has given you a 'Notice of the Seven-Day
21 Right to Cancel.'"

22 (vi) The notice shall be accompanied by a completed form in duplicate,
23 captioned "Notice of Cancellation," which shall also be attached to the agreement
24 or offer to purchase and be easily detachable, and which shall contain the
25 following statement written in the same language, e.g., Spanish, as used in the
26 contract:

27 "Notice of Cancellation"

28 /enter date of transaction/
29 _____

30 (Date)

31 "You may cancel this transaction, without any penalty or obligation, within
32 seven business days from the above date.

33 If you cancel, any property traded in, any payments made by you under the
34 contract or sale, and any negotiable instrument executed by you will be returned
35 within 10 days following receipt by the seller of your cancellation notice, and any
36 security interest arising out of the transaction will be canceled.

37 If you cancel, you must make available to the seller at your residence, in
38 substantially as good condition as when received, any goods delivered to you
39 under this contract or sale, or you may, if you wish, comply with the instructions
40 of the seller regarding the return shipment of the goods at the seller's expense and
41 risk.

42 If you do make the goods available to the seller and the seller does not pick them
43 up within 20 days of the date of your notice of cancellation, you may retain or

1 dispose of the goods without any further obligation. If you fail to make the goods
2 available to the seller, or if you agree to return the goods to the seller and fail to do
3 so, then you remain liable for performance of all obligations under the contract.”

4 To cancel this transaction, mail or deliver a signed and dated copy of this
5 cancellation notice, or any other written notice, or send a telegram to

6 _____,

7 /name of seller/

8 at _____

9 /address of seller’s place of business/

10 not later than midnight of _____.

11 (Date)

12 I hereby cancel this transaction. _

13 (Date)

14 _____

15 (Buyer’s signature)

16 **Comment.** Paragraph (4) of subdivision (c) of Section 7159 is amended to correct a cross-
17 reference.

18 Paragraph (9) of subdivision (d) is amended to make a grammatical correction.

19 Paragraph (4) of subdivision (e) is amended to correct terminology and to add a non-
20 substantive clarification. See Civ. Code § 7034 (“preliminary notice” defined).

21 **Bus. & Prof. Code § 7159.1 (amended). Notice to buyer**

22 SEC. _____. Section 7159.1 of the Business and Professions Code is amended to
23 read:

24 7159.1. (a) In any contract for the sale of home improvement goods or services
25 offered by door-to-door sale that contains or is secured by a lien on real property,
26 the contract shall be accompanied by the following notice in 18-point boldfaced
27 type:

28 “WARNING TO BUYER: IF YOU SIGN THE CONTRACT WHICH
29 ACCOMPANIES THIS NOTICE, YOU WILL BE PUTTING UP YOUR HOME
30 AS SECURITY. THIS MEANS THAT YOUR HOME COULD BE SOLD
31 WITHOUT YOUR PERMISSION AND WITHOUT ANY COURT ACTION IF
32 YOU MISS ANY PAYMENT REQUIRED BY THIS CONTRACT.”

33 This notice shall be written in the same language as the rest of the contract. It
34 shall be on a separate piece of paper from the rest of the contract and shall be
35 signed and dated by the buyer. The home improvement contractor or home
36 improvement salesperson shall deliver to the buyer at the time of the buyer’s
37 signing and dating of the notice a legible copy of the signed and dated notice. A
38 security interest created in any contract described in this section that does not
39 provide the notice as required by this section shall be void and unenforceable.

40 This section shall not apply to any of the following:

41 (a) Any contract that is subject to Chapter 1 (commencing with Section 1801) of
42 Title 2 of Part 4 of Division 3 of the Civil Code.

1 (b) A mechanic's lien established pursuant to ~~Chapter 2 (commencing with~~
2 ~~Section 3109) of Title 15 of Part 4 of Division 3~~ Chapter 4 (commencing with
3 Section 7400) of Part 6 of Division 4 of the Civil Code.

4 (c) Any contract that is subject to subdivision (a) of Section 7159.2.

5 **Comment.** Section 7159.1 is amended to correct a cross-reference.

6 **Bus. & Prof. Code § 7159.5 (amended). Home improvement contract violation**

7 SEC. _____. Section 7159.5 of the Business and Professions Code is amended to
8 read:

9 7159.5. This section applies to all home improvement contracts, as defined in
10 Section 7151.2, between an owner or tenant and a contractor, whether a general
11 contractor or a specialty contractor, who is licensed or subject to be licensed
12 pursuant to this chapter with regard to the transaction.

13 (a) Failure by the licensee or a person subject to be licensed under this chapter,
14 or by his or her agent or salesperson to comply with the following provisions is
15 cause for discipline:

16 (1) The contract shall include the agreed contract amount in dollars and cents.
17 The contract amount shall include the entire cost of the contract, including profit,
18 labor, and materials, but excluding finance charges.

19 (2) If there is a separate finance charge between the contractor and the person
20 contracting for home improvement, the finance charge shall be set out separately
21 from the contract amount.

22 (3) If a down payment will be charged, the down payment may not exceed one
23 thousand dollars (\$1,000) or 10 percent of the contract amount, whichever is less.

24 (4) If, in addition to a down payment, the contract provides for payments to be
25 made prior to completion of the work, the contract shall include a schedule of
26 payments in dollars and cents specifically referencing the amount of work or
27 services to be performed and any materials and equipment to be supplied.

28 (5) Except for a down payment, the contractor may neither request nor accept
29 payment that exceeds the value of the work performed or material delivered.

30 (6) Upon any payment by the person contracting for home improvement, and
31 prior to any further payment being made, the contractor shall, if requested, obtain
32 and furnish to the person a full and unconditional release from any potential lien
33 claimant claim or mechanic's lien pursuant to Section ~~3114~~ 7172 of the Civil Code
34 for any portion of the work for which payment has been made. The person
35 contracting for home improvement may withhold all further payments until these
36 releases are furnished.

37 (7) If the contract provides for a payment of a salesperson's commission out of
38 the contract price, that payment shall be made on a pro rata basis in proportion to
39 the schedule of payments made to the contractor by the disbursing party in
40 accordance with paragraph (4).

41 (8) A contractor furnishing a performance and payment bond, lien and
42 completion bond, or a bond equivalent or joint control approved by the registrar

1 covering full performance and payment is exempt from paragraphs (3), (4), and
2 (5), and need not include, as part of the contract, the Mechanics' Lien Warning
3 which is a requirement specified in Section 7159. A contractor furnishing these
4 bonds, bond equivalents, or a joint control approved by the registrar may accept
5 payment prior to completion. If the contract provides for a contractor to furnish
6 joint control, the contractor shall not have any financial or other interest in the
7 joint control.

8 (b) A violation of paragraph (1), (3), or (5) of subdivision (a) by a licensee or a
9 person subject to be licensed under this chapter, or by his or her agent or
10 salesperson, is a misdemeanor punishable by a fine of not less than one hundred
11 dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in
12 a county jail not exceeding one year, or by both fine and imprisonment.

13 (1) An indictment or information against a person who is not licensed but who is
14 required to be licensed under this chapter shall be brought, or a criminal complaint
15 filed, for a violation of this section within four years from the date the buyer signs
16 the contract.

17 (2) An indictment or information against a person who is licensed under this
18 chapter shall be brought, or a criminal complaint filed, for a violation of this
19 section within two years from the date the buyer signs the contract.

20 (3) The limitations on actions in this subdivision shall not apply to any
21 administrative action filed against a licensed contractor.

22 (c) Any person who violates this section as part of a plan or scheme to defraud
23 an owner or tenant of a residential or nonresidential structure, including a
24 mobilehome or manufactured home, in connection with the offer or performance
25 of repairs to the structure for damage caused by a natural disaster, shall be ordered
26 by the court to make full restitution to the victim based on the person's ability to
27 pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In
28 addition to full restitution, and imprisonment authorized by this section, the court
29 may impose a fine of not less than five hundred dollars (\$500) nor more than
30 twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay.
31 This subdivision applies to natural disasters for which a state of emergency is
32 proclaimed by the Governor pursuant to Section 8625 of the Government Code, or
33 for which an emergency or major disaster is declared by the President of the
34 United States.

35 **Comment.** Paragraph (6) of subdivision (a) of Section 7159.5 is amended to correct a cross-
36 reference.

37 **Bus. & Prof. Code § 7159.14 (amended). Service and repair contract**

38 SEC. _____. Section 7159.14 of the Business and Professions Code is amended
39 to read:

40 7159.14. (a) This section applies to a service and repair contract as defined in
41 Section 7159.10. A violation of this section by a licensee or a person subject to be

1 licensed under this chapter, or by his or her agent or salesperson, is cause for
2 discipline.

3 (1) The contract may not exceed seven hundred fifty dollars (\$750).

4 (2) The contract shall state the agreed contract amount, which may be stated as
5 either a fixed contract amount in dollars and cents or, if a time and materials
6 formula is used, as an estimated contract amount in dollars and cents.

7 (3) The contract amount shall include the entire cost of the contract including
8 profit, labor and materials but excluding finance charges.

9 (4) The actual contract amount of a time and materials contract may not exceed
10 the estimated contract amount without written authorization from the buyer.

11 (5) The prospective buyer must have initiated contact with the contractor to
12 request work.

13 (6) The contractor may not sell the buyer goods or services beyond those
14 reasonably necessary to take care of the particular problem that caused the buyer
15 to contact the contractor.

16 (7) No payment may be due before the project is completed.

17 (8) A service and repair contractor may charge only one service charge. For
18 purposes of this chapter, a service charge includes such charges as a service or trip
19 charge, or an inspection fee.

20 (9) A service and repair contractor charging a service charge must disclose in all
21 advertisements that there is a service charge and, when the customer initiates the
22 call for service, must disclose the amount of the service charge.

23 (10) The service and repair contractor must offer to the customer any parts that
24 were replaced.

25 (11) Upon any payment by the buyer, the contractor shall, if requested, obtain
26 and furnish to the buyer a full and unconditional release from any potential lien
27 claimant claim or mechanics' lien pursuant to Section ~~3114~~ 7172 of the Civil Code
28 for any portion of the work for which payment has been made.

29 (b) A violation of paragraph (1), (2), (3), (4), (5), (6), or (8) of subdivision (a) by
30 a licensee or a person subject to be licensed under this chapter, or by his or her
31 agent or salesperson, is a misdemeanor punishable by a fine of not less than one
32 hundred dollars (\$100) nor more than five thousand dollars (\$5,000) or by
33 imprisonment in a county jail not exceeding one year, or by both fine and
34 imprisonment.

35 (1) An indictment or information against a person who is not licensed but who is
36 required to be licensed under this chapter shall be brought, or a criminal complaint
37 filed, for a violation of this section within four years from the date the buyer signs
38 the contract.

39 (2) An indictment or information against a person who is licensed under this
40 chapter shall be brought, or a criminal complaint filed, for a violation of this
41 section within two years from the date the buyer signs the contract.

42 (3) The limitations on actions in this subdivision shall not apply to any
43 administrative action filed against a licensed contractor.

1 (c) Any person who violates this section as part of a plan or scheme to defraud
2 an owner or tenant of a residential or nonresidential structure, including a
3 mobilehome or manufactured home, in connection with the offer or performance
4 of repairs to the structure for damage caused by a natural disaster, shall be ordered
5 by the court to make full restitution to the victim based on the person's ability to
6 pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In
7 addition to full restitution, and imprisonment authorized by this section, the court
8 may impose a fine of not less than five hundred dollars (\$500) nor more than
9 twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay.
10 This subdivision applies to natural disasters for which a state of emergency is
11 proclaimed by the Governor pursuant to Section 8625 of the Government Code, or
12 for which an emergency or major disaster is declared by the President of the
13 United States.

14 (d) This section shall become operative on January 1, 2006.

15 **Comment.** Section 7159.14 is amended to correct a cross-reference.

16 **Bus. & Prof. Code § 7164 (amended). Contract for construction of single-family dwelling**

17 SEC. _____. Section 7164 of the Business and Professions Code is amended to
18 read:

19 7164. (a) Notwithstanding Section 7044, every contract and any changes in a
20 contract, between an owner and a contractor, for the construction of a single-
21 family dwelling to be retained by the owner for at least one year shall be
22 evidenced in writing signed by both parties.

23 (b) The writing shall contain the following:

24 (1) The name, address, and license number of the contractor.

25 (2) The approximate dates when the work will begin and be substantially
26 completed.

27 (3) A legal description of the location where the work will be done.

28 (4) A statement with the heading "Mechanics' Lien Warning" as follows:

29 "MECHANICS LIEN WARNING:

30 Anyone who helps improve your property, but who is not paid, may record what
31 is called a mechanics' lien on your property. A mechanics' lien is a claim, like a
32 mortgage or home equity loan, made against your property and recorded with the
33 county recorder.

34 Even if you pay your contractor in full, unpaid subcontractors, suppliers, and
35 laborers who helped to improve your property may record mechanics' liens and
36 sue you in court to foreclose the lien. If a court finds the lien is valid, you could be
37 forced to pay twice or have a court officer sell your home to pay the lien. Liens
38 can also affect your credit.

39 To preserve their right to record a lien, each subcontractor and material supplier
40 must provide you with a document called a '~~20-day~~ Preliminary Notice.' This
41 notice is not a lien. The purpose of the notice is to let you know that the person

1 who sends you the notice has the right to record a lien on your property if he or
2 she is not paid.

3 BE CAREFUL. The Preliminary Notice can be sent up to 20 days after the
4 subcontractor starts work or the supplier provides material. This can be a big
5 problem if you pay your contractor before you have received the Preliminary
6 Notices.

7 You will not get Preliminary Notices from your prime contractor or other
8 persons you contract with directly or from laborers who work on your project. The
9 law assumes that you already know they are improving your property.

10 PROTECT YOURSELF FROM LIENS. You can protect yourself from liens by
11 getting a list from your contractor of all the subcontractors and material suppliers
12 that work on your project. Find out from your contractor when these
13 subcontractors started work and when these suppliers delivered goods or materials.
14 Then wait 20 days, paying attention to the Preliminary Notices you receive.

15 PAY WITH JOINT CHECKS. One way to protect yourself is to pay with a joint
16 check. When your contractor tells you it is time to pay for the work of a
17 subcontractor or supplier who has provided you with a Preliminary Notice, write a
18 joint check payable to both the contractor and the subcontractor or material
19 supplier.

20 For other ways to prevent liens, visit CSLB's Web site at www.cslb.ca.gov or
21 call CSLB at 800-321-CSLB (2752).

22 REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN
23 PLACED ON YOUR HOME. This can mean that you may have to pay twice, or
24 face the forced sale of your home to pay what you owe.”

25 (5) (A) A statement prepared by the board through regulation that emphasizes
26 the value of commercial general liability insurance and encourages the owner to
27 verify the contractor's insurance coverage and status.

28 (B) A check box indicating whether or not the contractor carries commercial
29 general liability insurance, and if that is the case, the name and the telephone
30 number of the insurer.

31 (c) The writing may also contain other matters agreed to by the parties to the
32 contract. The writing shall be legible and shall clearly describe any other
33 document which is to be incorporated into the contract. Prior to commencement of
34 any work, the owner shall be furnished a copy of the written agreement, signed by
35 the contractor. The provisions of this section are not exclusive and do not relieve
36 the contractor from compliance with all other applicable provisions of law.

37 (d) Every contract subject to the provisions of this section shall contain, in close
38 proximity to the signatures of the owner and contractor, a notice in at least 10-
39 point bold type or in all capital letters, stating that the owner has the right to
40 require the contractor to have a performance and payment bond and that the
41 expense of the bond may be borne by the owner.

1 (e) The requirements in paragraph (5) of subdivision (b) shall become operative
2 three months after the board adopts the regulations referenced in subparagraph (A)
3 of paragraph (5) of subdivision (b).

4 (f) This section shall become operative on January 1, 2006.

5 **Comment.** Paragraph (4) of subdivision (a) of Section 7164 is amended to correct terminology
6 and to add a non-substantive clarification. See Civ. Code § 7034 (“preliminary notice” defined).

7 **Bus. & Prof. Code § 8513 (amended). Notice to owner by pest control company**

8 SEC. _____. Section 8513 of the Business and Professions Code is amended to
9 read:

10 8513. (a) The board shall prescribe a form entitled “Notice to Owner” that shall
11 describe, in nontechnical language and in a clear and coherent manner using words
12 with common and everyday meaning, the pertinent provisions of this state’s
13 mechanics’ lien laws and the rights and responsibilities of an owner of property
14 and a registered pest control company thereunder. Each company registered under
15 this chapter, prior to entering into a contract with an owner for work for which a
16 company registration is required, shall give a copy of this “Notice to Owner” to
17 the owner, his or her agent, or the payer.

18 (b) No company that is required to be registered under this chapter shall require
19 or request a waiver of lien rights from any subcontractor, employee, or supplier.

20 (c) Each company registered under this chapter that acts as a subcontractor for
21 another company registered under this chapter shall, within 20 days of
22 commencement of any work for which a company registration is required, give the
23 preliminary ~~20 day notice (private work) in accordance with the provisions of~~
24 ~~Section 3097~~ notice in accordance with Chapter 2 (commencing with Section
25 7200) of Part 6 of Division 4 of the Civil Code, to the owner, his or her agent, or
26 the payer.

27 (d) Each company registered under this chapter that acts as a prime contractor
28 for work for which a company registration is required shall, prior to accepting
29 payment for the work, furnish to the owner, his or her agent, or the payer a full and
30 unconditional release from any claim of mechanics’ lien by any subcontractor
31 entitled to enforce a mechanics’ lien pursuant to Section ~~3114~~ 7172 of the Civil
32 Code.

33 (e) Each company registered under this chapter that subcontracts to another
34 company registered under this chapter work for which a company registration is
35 required shall furnish to the subcontractor the name of the owner, his or her agent,
36 or the payer.

37 (f) The provisions of this section shall be applicable only to those registered
38 companies, as defined in Section 8506.1, operating pursuant to a Branch 1 or
39 Branch 3 registration.

40 (g) A violation of the provisions of this section is a ground for disciplinary
41 action.

42 **Comment.** Section 8513 is amended to correct cross-references and terminology.

1 **Bus. & Prof. Code § 17577.5 (amended). Contract for home water treatment device**

2 SEC. _____. Section 17577.5 of the Business and Professions Code is amended
3 to read:

4 17577.5. (a) No contract or offer for the sale, lease, or rental of a home water
5 treatment device and no purchase money loan, as defined in subdivision (b), shall
6 provide for a lien on real property. Any lien taken in violation of this section is
7 void and unenforceable.

8 (b) For the purpose of this section, “purchase money loan” means a loan or an
9 advance under an open-end credit account if both of the following occur:

10 (1) The primary purpose of the loan or the primary purpose of establishing the
11 open-end credit account is to finance all or a portion of the purchase price or any
12 of the lease or rental payments for a water treatment device.

13 (2) The creditor knows the primary purpose of the loan or the primary purpose
14 of establishing the open-end credit account when the loan is initially made or the
15 open-end credit account is established.

16 (c) The creditor shall be deemed to know that the primary purpose of the loan or
17 the primary purpose of establishing the open-end credit account is the primary
18 purpose described in paragraph (1) of subdivision (b) if any of the following
19 occur:

20 (1) The consumer’s application for credit or any other document in the creditor’s
21 possession before the loan is made or the open-end account is established indicates
22 the primary purpose of the loan or the open-end credit account.

23 (2) The seller, lessor, or renter arranges or guarantees the loan or open-end
24 account, or participates in the preparation of the consumer’s application for credit
25 or other loan documents, or receives from the creditor a loan commission,
26 brokerage, or referral fee.

27 (d) For the purpose of this section, “open-end credit” has the same meaning as
28 used in Section 226.2 of Title 12 of the Code of Federal Regulations.

29 (e) This section does not apply to mechanics’ liens established pursuant to
30 ~~Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3~~
31 Chapter 4 (commencing with Section 7400) of Part 6 of Division 4 of the Civil
32 Code.

33 **Comment.** Section 17577.5 is amended to correct a cross-reference.

34 CIVIL CODE

35 **Civ. Code §§ 1749.70-1749.76 (added). Automatic checkout system**

36 SEC. _____. Title 1.4C (commencing with Section 1749.70) is added to Part 4 of
37 Division 3 of the Civil Code, to read:

Title 1.4C. Automatic Checkout System

Civ. Code § 1749.70. Clearly readable price on commodities

1749.70. (a) Every retail grocery store or grocery department within a general retail merchandise store which uses an automatic checkout system shall cause to have a clearly readable price indicated on 85 percent of the total number of packaged consumer commodities offered for sale which are not exempt pursuant to subdivision (b).

The management of any such retail grocery store or grocery department shall determine the number of consumer commodities normally offered for sale on a daily basis, shall determine the consumer commodities to be exempted pursuant to this subdivision, and shall maintain a list of those consumer commodities exempt pursuant to this subdivision. The list shall be made available to a designated representative of the appropriate local union, the members of which are responsible for item pricing, in those stores or departments that have collective bargaining agreements, seven days prior to an item or items being exempted pursuant to this subdivision. In addition, the list shall be available and posted in a prominent place in the store seven days prior to an item or items being exempted pursuant to this subdivision.

(b) The provisions of this section shall not apply to any of the following:

(1) Any consumer commodity which was not generally item-priced on January 1, 1977, as determined by the Department of Food and Agriculture pursuant to subdivision (c) of Section 12604.5 of the Business and Professions Code, as in effect July 8, 1977.

(2) Any unpackaged fresh food produce, or to consumer commodities which are under three cubic inches in size, weigh less than three ounces, and are priced under forty cents (\$0.40).

(3) Any consumer commodity offered as a sale item or as a special.

(4) Any business which has as its only regular employees the owner thereof, or the parent, spouse, or child of such owner, or, in addition thereto, not more than two other regular employees.

(5) Identical items within a multi-item package.

(6) Items sold through a vending machine.

(c) For the purposes of this section:

(1) "Automatic checkout system" means a computer capable of interpreting the universal product code or any other code which is on an item offered for sale to determine the price of items being purchased, regardless of whether the code entry is accomplished manually by a human or automatically by a machine.

(2) "Consumer commodity" includes:

(A) Food, including all material whether solid, liquid, or mixed, and whether simple or compound, which is used or intended for consumption by human beings or domestic animals normally kept as household pets, and all substances or

1 ingredients added to any such material for any purpose. This definition shall not
2 apply to individual packages of cigarettes or individual cigars.

3 (B) Napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper
4 toweling, and disposable plates and cups.

5 (C) Detergents, soaps, and other cleaning agents.

6 (D) Pharmaceuticals, including nonprescription drugs, bandages, female hygiene
7 products, and toiletries.

8 (3) “Grocery department” means an area within a general retail merchandise
9 store which is engaged primarily in the retail sale of packaged food, rather than
10 food prepared for immediate consumption on or off the premises.

11 (4) “Grocery store” means a store engaged primarily in the retail sale of
12 packaged food, rather than food prepared for consumption on the premises.

13 (5) “Sale item” or “special” means any consumer commodity offered in good
14 faith for a period of 14 days or less, on sale at a price below the normal price that
15 item is usually sold for in that store. The Department of Food and Agriculture
16 shall determine the normal length of a sale held for consumer commodities
17 generally item priced on January 1, 1977, in stores regulated pursuant to this title,
18 and that period shall be used for the purposes of this subdivision. The
19 department’s determination as to the normal length of a sale shall be binding for
20 the purposes of this section, but each such determination shall not exceed seven
21 days.

22 **Comment.** Section 1749.70 continues former Section 7100 without substantive change. The
23 former provision was ambiguous in its reference to “this chapter”; the new provision corrects the
24 reference to “this title”.

25 **Civ. Code § 1749.71. Violations and penalty**

26 1749.71. (a) The intentional violation of Section 1749.70 is punishable by a civil
27 penalty of not less than twenty-five dollars (\$25) nor more than five hundred
28 dollars (\$500).

29 (b) Failure to have a clearly readable price indicated on 12 units of the same
30 item required to be item-priced of the same commodity shall constitute a
31 presumption of intent to violate Section 1749.70.

32 (c) Every additional 12 units of the same item required to be item-priced that fail
33 to have a price indicated on them shall constitute a presumption of intent to violate
34 Section 1749.70.

35 (d) Each day that a violation continues shall also constitute a separate violation
36 after notification thereof to the manager or assistant manager of the retail grocery
37 store or the grocery department of the general retail merchandise store and shall
38 constitute a presumption of intent to violate Section 1749.70.

39 (e) Notwithstanding any other provision of law, any person may bring an action
40 to enjoin a violation of Section 1749.70.

41 **Comment.** Section 1749.71 continues former Section 7101 without substantive change.

1 **Civ. Code § 1749.72. Cause of action**

2 1749.72. Any person, firm, corporation, or association who violates Sections
3 1749.70 and 1749.71 shall be liable to any person injured for any losses and
4 expenses thereby incurred, and for the sum of fifty dollars (\$50) in addition
5 thereto. The remedy set forth herein is applicable only to actions brought in the
6 name of, and on behalf of, a single plaintiff and shall not be applicable in multiple
7 plaintiff or class actions.

8 **Comment.** Section 1749.72 continues former Section 7102 without substantive change.

9 **Civ. Code § 1749.73. Unintentional error**

10 1749.73. Improper pricing on the shelf or on the item due to unintentional error
11 shall not constitute a violation of this title.

12 **Comment.** Section 1749.73 continues former Section 7103 without substantive change. The
13 former provision was ambiguous in its reference to “this division”; the new provision corrects the
14 reference to “this title”.

15 **Civ. Code § 1749.74. Exclusive remedies**

16 1749.74. The remedies set forth in Sections 1749.71 and 1749.72 are the
17 exclusive remedies available to any person, state or local agency or law
18 enforcement official.

19 **Comment.** Section 1749.74 continues former Section 7104 without substantive change.

20 **Civ. Code § 1749.75. Name of title**

21 1749.75. This title shall be known and may be cited as the Rosenthal-Roberti
22 Item Pricing Act.

23 **Comment.** Section 1749.75 continues former Section 7105 without substantive change.

24 **Civ. Code § 1749.76. Preemption**

25 1749.76. It is the intention of the Legislature that this title shall occupy the field
26 with regard to item pricing and shall preempt all local ordinances, rules, or
27 regulations concerning item pricing.

28 **Comment.** Section 1749.76 continues former Section 7106 without substantive change.

29 **Civ. Code § 1917.166 (amended). Priority of lien**

30 SEC. _____. Section 1917.166 of the Civil Code is amended to read:

31 1917.166. The lien of a shared appreciation loan, including the principal amount
32 and all interest, whether accrued or to be accrued, and all amounts of contingent
33 deferred interest, shall attach from the time of the recordation of the deed of trust
34 securing the loan, and the lien, including the lien of the interest accrued or to be
35 accrued and of the contingent deferred interest, shall have priority over any other
36 lien or encumbrance affecting the property secured by the shared appreciation
37 instrument, recorded after the time of recordation of the shared appreciation
38 instrument. However, nothing in this section or Section 1917.165 shall preclude a

1 junior lien or encumbrance subordinate to the obligation of the shared appreciation
2 loan. In no case may a junior lien achieve priority over the lien securing the
3 obligation of the shared appreciation loan, provided that nothing in this section
4 shall be construed to supersede Section ~~3134~~ of the Civil Code 7450.

5 **Comment.** Section 1917.166 is amended to correct a cross-reference.

6 **Civ. Code § 1917.615 (amended). Priority of lien**

7 SEC. _____. Section 1917.615 of the Civil Code is amended to read:

8 1917.615. The lien of a shared appreciation loan for seniors, including the total
9 loan obligation, shall attach from the time of the recordation of the deed of trust
10 securing the loan, and the lien, including the lien of the total loan obligation
11 accrued or to be accrued, shall have priority over any other lien or encumbrance
12 affecting the property secured by the shared appreciation instrument and recorded
13 after the time of recordation of the shared appreciation instrument. However,
14 nothing in this section or Section 1917.614 shall preclude a junior lien or
15 encumbrance subordinate to the total loan obligation of the shared appreciation
16 loan for seniors. In no case may a junior lien achieve priority over the lien
17 securing the total loan obligation of the shared appreciation loan, provided that
18 nothing in this section shall be construed to supersede Section ~~3134~~ 7450.

19 **Comment.** Section 1917.615 is amended to correct a cross-reference.

20 **Civ. Code § 3059 (amended). Mechanics lien**

21 SEC. _____. Section 3059 of the Civil Code is amended to read:

22 3059. The liens of mechanics, for materials and services upon real property, are
23 regulated by ~~Chapter 2 (commencing with Section 3109) of Title 15 of this part~~
24 Chapter 4 (commencing with Section 7400) of Part 6 of Division 4.

25 **Comment.** Section 3059 is amended to correct a cross-reference.

26 **Civ. Code § 3060 (amended). Lien on mine**

27 SEC. _____. Section 3060 of the Civil Code is amended to read:

28 3060. (a) As used in this section, “mine” means a mining claim or real property
29 worked as a mine.

30 (b) Any person who performs labor in ~~any mining claim or claims, or in or upon~~
31 ~~any real property worked~~ as a mine, either in the ~~development thereof~~ its
32 development or in working ~~thereon~~ on it by the subtractive process, or furnishes
33 materials to be used or consumed ~~therein~~ in it, has a lien upon the ~~same~~ mine and
34 the works owned and used by the owners for milling or reducing the ores from the
35 ~~same~~ mine, for the value of the work or labor done or materials furnished by each
36 ~~respectively~~, whether done or furnished at the instance of the owner of ~~such~~
37 ~~mining claim or claims or real property worked as a~~ the mine, or his the owner’s
38 agent, and every contractor, subcontractor, superintendent, or other person having
39 charge of any mining or work or labor performed in and about ~~such mining claim~~
40 ~~or claims or real property worked as a~~ the mine, either as lessee or under a

1 working bond or contract thereon shall be held to be the agent of the owner for the
2 purposes of this section. The liens provided for by this section shall be enforced in
3 the same manner as those provided for by ~~Title 15 (commencing with Section~~
4 ~~3082), Part 4, Division 3~~ Part 6 (commencing with Section 7000) of Division 4.

5 **Comment.** Section 3060 is amended to correct a cross-reference. The other changes are
6 technical.

7 **Civ. Code § 3319 (amended). Design professional private work contract**

8 SEC. _____. Section 3319 of the Civil Code is amended to read:

9 3319. (a) In each written contract for private works of improvement entered into
10 on or after January 1, 1996, the contracting party and the design professional may
11 agree to contractual provisions that include a late payment penalty, in lieu of any
12 interest otherwise due. The terms of the late payment penalty shall be specifically
13 set forth in the written contract.

14 (b) The penalty authorized pursuant to subdivision (a) shall be separate from,
15 and in addition to, the design professionals' liens provided by ~~Chapter 8~~
16 ~~(commencing with Section 3081.1) of Title 14 of Part 4 of Division 3~~ Chapter 3
17 (commencing with Section 7300) of, mechanics' liens provided by ~~Chapter 2~~
18 ~~(commencing with Section 3109) of Title 15 of Part 4 of Division 3~~ Chapter 4
19 (commencing with Section 7400) of, and stop notices for private works provided
20 ~~in Chapter 3 (commencing with Section 3156) of Title 15 of Part 4 of Division 3~~
21 payment notices provided by Chapter 5 (commencing with Section 7500) of, Part
22 6.

23 (c) None of the rights or obligations created or permitted by this section between
24 design professionals and contracting parties shall apply to construction loan funds
25 held by a lender pursuant to a construction loan agreement.

26 (d) For purposes of this section, the following definitions apply:

27 (1) "Contracting party" means any person or entity entering into a written
28 contract with a design professional for professional design services for a private
29 work of improvement.

30 (2) "Design professional" means a person licensed as an architect pursuant to
31 Chapter 3 (commencing with Section 5500) of Division 3 of the Business and
32 Professions Code, registered as a professional engineer pursuant to Chapter 7
33 (commencing with Section 6700) of Division 3 of the Business and Professions
34 Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with
35 Section 8700) of Division 3 of the Business and Professions Code.

36 **Comment.** Section 3319 is amended to correct cross-references.

37 **Civ. Code § 3320 (amended). Payment to design professional on public work contract**

38 SEC. _____. Section 3320 of the Civil Code is amended to read:

39 3320. (a) In each contract for public works of improvement, entered into on or
40 after January 1, 1996, the public agency shall pay to the prime design professional
41 any progress payment within 30 days of receipt of a written demand for payment

1 in accordance with the contract, and the final retention payment within 45 days of
2 receipt of a written demand for payment in accordance with the contract. If the
3 public agency disputes in good faith any portion of the amount due, it may
4 withhold from the payment an amount not to exceed 150 percent of the disputed
5 amount. The disputed amount withheld is not subject to any penalty authorized by
6 this section.

7 (b) If any amount is wrongfully withheld or is not timely paid in violation of this
8 section, the prime design professional shall be entitled to a penalty of 11/2 percent
9 for the improperly withheld amount, in lieu of any interest otherwise due, per
10 month for every month that payment is not made. In any action for the collection
11 of amounts withheld in violation of this section, the prevailing party is entitled to
12 his or her reasonable attorney's fees and costs.

13 (c) The penalty described in subdivision (b) is separate from, and in addition to,
14 the design professionals' ~~liens provided by Chapter 8 (commencing with Section~~
15 ~~3081.1) of Title 14 of Part 4 of Division 3, mechanics' liens provided by Chapter 2~~
16 ~~(commencing with Section 3109) of Title 15 of Part 4 of Division 3, and stop~~
17 ~~notices for public works provided in Chapter 3 (commencing with Section 3156)~~
18 ~~of Title 15 of Part 4 of Division 3 remedies for a public works contract provided in~~
19 Part 6 (commencing with Section 41010) of Division 2 of the Public Contract
20 Code.

21 (d) This section does not apply to state agency contracts subject to Section 927.6
22 of the Government Code.

23 (e) None of the rights or obligations created by this section between prime
24 design professionals and public agencies apply to construction loan funds held by
25 a lender pursuant to a construction loan agreement.

26 (f) For purposes of this section:

27 (1) "Public agency" means the state, any county, any city, any city and county,
28 any district, any public authority, any public agency, any municipal corporation or
29 other political subdivision or political corporation of the state.

30 (2) "Design professional" means a person licensed as an architect pursuant to
31 Chapter 3 (commencing with Section 5500) of Division 3 of the Business and
32 Professions Code, registered as a professional engineer pursuant to Chapter 7
33 (commencing with Section 6700) of Division 3 of the Business and Professions
34 Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with
35 Section 8700) of Division 3 of the Business and Professions Code.

36 (3) "Prime design professional" means a design professional with a written
37 contract directly with the public agency.

38 **Comment.** Section 3320 is amended to correct a cross-reference. The references to liens are
39 not continued; the lien remedy is unavailable on a public works contract.

40 **Civ. Code § 3321 (amended). Payment by design professional on public work contract**

41 SEC. _____. Section 3321 of the Civil Code is amended to read:

1 3321. (a) In each contract for public works of improvement, a prime design
2 professional shall pay to each subconsultant design professional the amount due
3 him or her from the payment received, not later than 15 days after receipt of each
4 progress payment or final retention payment. If the prime design professional
5 disputes in good faith any portion of the amount due, he or she may withhold from
6 the payment an amount not to exceed 150 percent of the disputed amount. The
7 disputed amount withheld shall not be subject to any penalty authorized by this
8 section.

9 (b) If any amount is wrongfully withheld or is not timely paid in violation of this
10 section, the subconsultant design professional shall be entitled to a penalty of 11/2
11 percent of the improperly withheld amount, in lieu of any interest otherwise due,
12 per month, for each month that payment is not made. In any action for the
13 collection of amounts withheld in violation of this section, the prevailing party
14 shall be entitled to his or her reasonable attorney's fees and costs.

15 (c) The penalty described in subdivision (b) shall be separate from, and in
16 addition to, the design professionals' ~~liens provided by Chapter 8 (commencing~~
17 ~~with Section 3081.1) of Title 14 of Part 4 of Division 3, mechanics' liens provided~~
18 ~~by Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3,~~
19 ~~and stop notices for public works provided in Chapter 3 (commencing with~~
20 ~~Section 3156) of Title 15 of Part 4 of Division 3~~ remedies for a public works
21 contract provided in Part 6 (commencing with Section 41010) of Division 2 of the
22 Public Contract Code.

23 (d) None of the rights or obligations created by this section between prime
24 design professionals and subconsultant design professionals shall apply to
25 construction loan funds held by a lender pursuant to a construction loan
26 agreement.

27 (e) For purposes of this section:

28 (1) "Public agency" means the state, any county, any city, any city and county,
29 any district, any public authority, any public agency, any municipal corporation or
30 other political subdivision or political corporation of the state.

31 (2) "Design professional" means a person licensed as an architect pursuant to
32 Chapter 3 (commencing with Section 5500) of Division 3 of the Business and
33 Professions Code, registered as a professional engineer pursuant to Chapter 7
34 (commencing with Section 6700) of Division 3 of the Business and Professions
35 Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with
36 Section 8700) of Division 3 of the Business and Professions Code.

37 (3) "Prime design professional" means a design professional having a written
38 contract directly with the public agency.

39 (4) "Subconsultant design professional" means a design professional having a
40 written contract with a prime design professional.

41 **Comment.** Section 3321 is amended to correct a cross-reference. The references to liens are
42 not continued; the lien remedy is unavailable on a public works contract.

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CODE OF CIVIL PROCEDURE

Code Civ. Proc. § 86 (amended). Classification of limited civil cases

SEC. _____. Section 86 of the Code of Civil Procedure is amended to read:

86. (a) The following civil cases and proceedings are limited civil cases:

(1) ~~Cases~~ A case at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to twenty-five thousand dollars (\$25,000) or less. This paragraph does not apply to ~~eases a case that involve~~ involves the legality of any tax, impost, assessment, toll, or municipal fine, except ~~actions an action~~ an action to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) ~~Actions~~ An action for dissolution of partnership where the total assets of the partnership do not exceed twenty-five thousand dollars (\$25,000); ~~actions an action~~ an action of interpleader where the amount of money or the value of the property involved does not exceed twenty-five thousand dollars (\$25,000).

(3) ~~Actions~~ An action to cancel or rescind a contract when the relief is sought in connection with an action to recover money not exceeding twenty-five thousand dollars (\$25,000) or property of a value not exceeding twenty-five thousand dollars (\$25,000), paid or delivered under, or in consideration of, the contract; ~~actions an action~~ an action to revise a contract where the relief is sought in an action upon the contract if the action otherwise is a limited civil case.

(4) ~~Proceedings~~ A proceeding in forcible entry or forcible or unlawful detainer where the whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or less.

(5) ~~Actions~~ An action to enforce and foreclose ~~liens~~ a lien on personal property where the amount of the ~~liens~~ lien is twenty-five thousand dollars (\$25,000) or less.

(6) ~~Actions~~ An action to enforce and foreclose, or ~~petitions~~ a petition to release, ~~liens of mechanics, materialmen, artisans, laborers, and of all other persons to whom liens are given~~ a lien arising under the provisions of ~~Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3~~ Chapter 4 (commencing with Section 7400) of Part 6 of Division 4 of the Civil Code, or to enforce and foreclose an assessment lien on a common interest development as defined in Section 1351 of the Civil Code, where the amount of the liens is twenty-five thousand dollars (\$25,000) or less. However, where an action to enforce the lien affects property that is also affected by a similar pending action that is not a limited civil case, or where the total amount of ~~the~~ liens sought to be foreclosed against the same property aggregates an amount in excess of twenty-five thousand dollars (\$25,000), the action is not a limited civil case.

(7) ~~Actions~~ An action for declaratory relief when brought pursuant to either of the following:

1 (A) By way of cross-complaint as to a right of indemnity with respect to the
2 relief demanded in the complaint or a cross-complaint in an action or proceeding
3 that is otherwise a limited civil case.

4 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and
5 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of
6 Division 3 of the Business and Professions Code, where the amount in controversy
7 is twenty-five thousand dollars (\$25,000) or less.

8 ~~(8) Actions~~ An action to issue a temporary restraining orders and preliminary
9 ~~injunctions, and order or preliminary injunction;~~ to take ~~accounts~~ an account,
10 where necessary to preserve the property or rights of any party to a limited civil
11 case; to make any order or perform any act, pursuant to Title 9 (commencing with
12 Section 680.010) of Part 2 (enforcement of judgments) in a limited civil case; to
13 appoint a receiver pursuant to Section 564 in a limited civil case; to determine title
14 to personal property seized in a limited civil case.

15 ~~(9) Actions~~ An action under Article 3 (commencing with Section 708.210) of
16 Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in
17 personal property or to enforce the liability of the debtor of a judgment debtor
18 where the interest claimed adversely is of a value not exceeding twenty-five
19 thousand dollars (\$25,000) or the debt denied does not exceed twenty-five
20 thousand dollars (\$25,000).

21 ~~(10) Arbitration-related petitions~~ An arbitration-related petition filed pursuant to
22 either of the following:

23 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3,
24 except for uninsured motorist arbitration proceedings in accordance with Section
25 11580.2 of the Insurance Code, if the petition is filed before the arbitration award
26 becomes final and the matter to be resolved by arbitration is a limited civil case
27 under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed
28 after the arbitration award becomes final and the amount of the award and all other
29 rulings, pronouncements, and decisions made in the award are within paragraphs
30 (1) to (9), inclusive, of subdivision (a).

31 (B) To confirm, correct, or vacate a fee arbitration award between an attorney
32 and client that is binding or has become binding, pursuant to Article 13
33 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and
34 Professions Code, where the arbitration award is twenty-five thousand dollars
35 (\$25,000) or less.

36 (b) The following cases in equity are limited civil cases:

37 (1) ~~Cases~~ A case to try title to personal property when the amount involved is
38 not more than twenty-five thousand dollars (\$25,000).

39 (2) ~~Cases~~ A case when equity is pleaded as a defensive matter in any case that is
40 otherwise a limited civil case.

41 (3) ~~Cases~~ A case to vacate a judgment or order of the court obtained in a limited
42 civil case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

1 **Comment.** Paragraph (6) of subdivision (a) of Section 86 is amended to correct a cross-
2 reference and eliminate obsolete terminology.

3 The section is also amended to make stylistic revisions.

4 **Code Civ. Proc. § 410.42 (amended). Dispute resolution provisions in construction contract**

5 SEC. _____. Section 410.42 of the Code of Civil Procedure is amended to read:

6 410.42. (a) The following provisions of a contract between the contractor and a
7 subcontractor with principal offices in this state, for the construction of a public or
8 private work of improvement in this state, shall be void and unenforceable:

9 (a) (1) A provision which purports to require any dispute between the parties to
10 be litigated, arbitrated, or otherwise determined outside this state.

11 (b) (2) A provision which purports to preclude a party from commencing such a
12 proceeding or obtaining a judgment or other resolution in this state or the courts of
13 this state.

14 (b) For purposes of this section, “construction” means any work or services
15 performed on, or materials provided for, a work of improvement, as defined in
16 Section ~~3106~~ 7046 of the Civil Code, and for which a lien may be claimed
17 pursuant to Section ~~3110~~ 7400 of the Civil Code (whether or not a lien is in fact
18 claimed) or for which such a lien could be claimed but for Section ~~3109~~ 7050 of
19 the Civil Code.

20 **Comment.** Section 410.42 is amended to correct cross-references. The other changes to the
21 section are technical.

22 **Code Civ. Proc. § 708.760 (amended). Judgment debtor a public work contractor**

23 SEC. _____. Section 708.760 of the Code of Civil Procedure is amended to read:

24 708.760. (a) If the judgment debtor named in the abstract or certified copy of the
25 judgment filed pursuant to this article is a contractor upon a public work, the cost
26 of which is to be paid out of public moneys voted, appropriated, or otherwise set
27 apart for such purpose, only so much of the contract price shall be deemed owing
28 and unpaid within the meaning of Section 708.740 or 708.750 as may remain
29 payable under the terms of the contractor’s contract, upon the completion thereof,
30 after deducting sums due and to become due to persons described in ~~Section 3181~~
31 ~~of the Civil Code~~ Section 42030 of the Public Contract Code. In ascertaining the
32 sums due or to become due to such persons, only claims which are filed against
33 the moneys due or to become due to the judgment debtor in accordance with ~~the~~
34 ~~provisions of Chapter 4 (commencing with Section 3179) of Title 15 of Part 4 of~~
35 ~~Division 3 of the Civil Code~~ Chapter 4 (commencing with Section 44110) of Part
36 6 of Division 2 of the Public Contract Code shall be considered.

37 (b) The Controller, auditor, or other public disbursing officer whose duty it is to
38 make payments under the provisions of the contract may not deposit an amount
39 with the court pursuant to this article until the contract is completed, but may
40 deposit an amount with the court to satisfy the claim of the judgment debtor before
41 the payments specified in subdivision (a) are made so long as a sufficient amount

1 is retained for the satisfaction of the claims of persons described in ~~Section 3181~~
2 ~~of the Civil Code~~ Section 42030 of the Public Contract Code.

3 **Comment.** Section 708.760 is amended to correct cross-references.

4 **Code Civ. Proc. § 1203.61 (amended). Oil and gas lien**

5 SEC. _____. Section 1203.61 of the Code of Civil Procedure is amended to read:

6 1203.61. (a) Any lien provided for by this chapter shall be enforced in the same
7 manner as provided in ~~Title 15 (commencing with Section 3082), Part 4, Division~~
8 ~~3, Part 6 (commencing with Section 7000) of Division 4~~ of the Civil Code. ~~Such~~
9 The action shall be filed within 180 days from the time of the recording of the lien
10 ~~provided for herein.~~ If a credit ~~be is~~ given and notice of the fact and terms of ~~such~~
11 ~~credit be the credit are~~ filed in the office of the county recorder subsequent to the
12 filing of ~~such the~~ the lien and prior to the expiration of ~~said the~~ the 180-day period, then
13 ~~such the~~ the lien continues in force until 180 days after the expiration of ~~such the~~
14 credit, but no lien continues in force by reason of any agreement to give credit for
15 a longer time than one year from the time the work is completed. If the
16 proceedings to enforce the lien ~~be are~~ are not prosecuted to trial within two years after
17 ~~the commencement thereof,~~ the court may in its discretion dismiss the ~~same action~~
18 for want of prosecution, and in all cases the dismissal of ~~such the~~ the action (unless it
19 ~~be is~~ expressly stated that ~~the same it~~ it is without prejudice) or a judgment ~~rendered~~
20 ~~therein in the action~~ that no lien exists ~~shall be is~~ is equivalent to the cancellation and
21 removal from the record of ~~such the~~ the lien.

22 (b) As against any purchaser or encumbrancer for value and in good faith whose
23 rights are acquired subsequent to the expiration of the 180-day period following
24 the filing of ~~such the~~ the lien, no giving of credit or extension of the lien or time to
25 enforce the ~~same lien~~ shall be effective unless evidenced by a notice or agreement
26 filed for record in the office of the county recorder prior to the acquisition of the
27 rights of ~~such the~~ the purchaser or encumbrancer.

28 **Comment.** Section 1203.61 is amended to correct a cross-reference. The other changes are
29 technical.

30 **Code Civ. Proc. § 1281.5 (amended). Arbitration**

31 SEC. _____. Section 1281.5 of the Code of Civil Procedure is amended to read:

32 1281.5. (a) Any person who proceeds to record and enforce a claim of lien by
33 commencement of an action pursuant to ~~Title 15 (commencing with Section 3082)~~
34 ~~of Part 4 of Division 3~~ Part 6 (commencing with Section 7000) of Division 4
35 of the Civil Code, does not thereby waive any right of arbitration the person may
36 have pursuant to a written agreement to arbitrate, if, in filing an action to enforce
37 the claim of lien, the claimant does either of the following:

38 (1) Includes an allegation in the complaint that the claimant does not intend to
39 waive any right of arbitration, and intends to move the court, within 30 days after
40 service of the summons and complaint, for an order to stay further proceedings in
41 the action.

1 (2) At the same time that the complaint is filed, the claimant files an application
2 that the action be stayed pending the arbitration of any issue, question, or dispute
3 that is claimed to be arbitrable under the agreement and that is relevant to the
4 action to enforce the claim of lien.

5 (b) Within 30 days after service of the summons and complaint, the claimant
6 shall file and serve a motion and notice of motion pursuant to Section 1281.4 to
7 stay the action pending the arbitration of any issue, question, or dispute that is
8 claimed to be arbitrable under the agreement and that is relevant to the action to
9 enforce the claim of lien. The failure of a claimant to comply with this subdivision
10 is a waiver of the claimant's right to compel arbitration.

11 (c) The failure of a defendant to file a petition pursuant to Section 1281.2 at or
12 before the time the defendant answers the complaint filed pursuant to subdivision
13 (a) is a waiver of the defendant's right to compel arbitration.

14 **Comment.** Section 1281.5 is amended to correct a cross-reference.

15 **Code Civ. Proc. § 1800 (amended). Assignment for benefit of creditors**

16 SEC. _____. Section 1800 of the Code of Civil Procedure is amended to read:

17 1800. (a) In this section:

18 (1) The term "insolvent" means:

19 (A) With reference to a person other than a partnership, a financial condition
20 such that the sum of the person's debts is greater than all of the person's property,
21 at a fair valuation, exclusive of both of the following:

22 (i) Property transferred, concealed, or removed with intent to hinder, delay, or
23 defraud the person's creditors.

24 (ii) Property that is exempt from property of the estate pursuant to the election of
25 the person made pursuant to Section 1801.

26 (B) With reference to a partnership, financial condition such that the sum of the
27 partnership's debts are greater than the aggregate of, at a fair valuation, both of the
28 following:

29 (i) All of the partnership's property, exclusive of property of the kind specified
30 in clause (i) subparagraph (A).

31 (ii) The sum of the excess of the value of each general partner's separate
32 property, exclusive of property of the kind specified in clause (ii) of subparagraph
33 (A), over the partner's separate debts.

34 (2) The term "inventory" means personal property leased or furnished, held for
35 sale or lease, or to be furnished under a contract for service, raw materials, work in
36 process, or materials used or consumed in a business, including farm products
37 such as crops or livestock, held for sale or lease.

38 (3) The term "insider" means:

39 (A) If the assignor is an individual, any of the following:

40 (i) A relative of the assignor or of a general partner of the assignor.

41 (ii) A partnership in which the assignor is a general partner.

42 (iii) A general partner of the assignor.

1 (iv) A corporation of which the assignor is a director, officer, or person in
2 control.

3 (B) If the assignor is a corporation, any of the following:

4 (i) A director of the assignor.

5 (ii) An officer of the assignor.

6 (iii) A person in control of the assignor.

7 (iv) A partnership in which the assignor is a general partner.

8 (v) A general partner of the assignor.

9 (vi) A relative of a general partner, director, officer, or person in control of the
10 assignor.

11 (C) If the assignor is a partnership, any of the following:

12 (i) A general partner in the assignor.

13 (ii) A relative of a general partner in, general partner of, or person in control of
14 the assignor.

15 (iii) A partnership in which the assignor is a general partner.

16 (iv) A general partner of the assignor.

17 (v) A person in control of the assignor.

18 (D) An affiliate of the assignor or an insider of an affiliate as if the affiliate were
19 the assignor.

20 (E) A managing agent of the assignor.

21 As used in this paragraph, “relative” means an individual related by affinity or
22 consanguinity with the third degree as determined by the common law, or an
23 individual in a step or adoptive relationship within the third degree; and an
24 “affiliate” means a person that directly or indirectly owns, controls or holds with
25 power to vote 20 percent or more of the outstanding voting securities of the
26 assignor or 20 percent or more of whose outstanding voting securities are directly
27 or indirectly owned, controlled or held with power to vote by the assignor
28 (excluding securities held in a fiduciary or agency capacity without sole
29 discretionary power to vote, or held solely to secure a debt if the holder has not in
30 fact exercised the power to vote), or a person who operates the business of the
31 assignor under a lease or operating agreement or whose business is operated by the
32 assignor under a lease or operating agreement.

33 (4) The term “judicial lien” means a lien obtained by judgment, levy,
34 sequestration, or other legal or equitable process or proceeding.

35 (5) The term “new value” means money or money’s worth in goods, services, or
36 new credit, or release by a transferee of property previously transferred to the
37 transferee in a transaction that is neither void nor voidable by the assignor or the
38 assignee under any applicable law, but does not include an obligation substituted
39 for an existing obligation.

40 (6) The term “receivable” means a right to payment, whether or not the right has
41 been earned by performance.

42 (7) The term “security agreement” means an agreement that creates or provides
43 for a security interest.

1 (8) The term “security interest” means a lien created by an agreement.

2 (9) The term “statutory lien” means a lien arising solely by force of a statute on
3 specified circumstances or conditions, or lien of distress for rent, whether or not
4 statutory, but does not include security interest or judicial lien, whether or not the
5 interest or lien is provided by or is dependent on a statute and whether or not the
6 interest or lien is made fully effective by statute.

7 (10) The term “transfer” means every mode, direct or indirect, absolute or
8 conditional, voluntary or involuntary, or disposing of or parting with property or
9 with an interest in property, including retention of title as a security interest.

10 (b) Except as provided in subdivision (c), the assignee of any general
11 assignment for the benefit of creditors (as defined in Section 493.010) may
12 recover any transfer of property of the assignor:

13 (1) To or for the benefit of a creditor;

14 (2) For or on account of an antecedent debt owed by the assignor before the
15 transfer was made;

16 (3) Made while the assignor was insolvent;

17 (4) Made on or within 90 days before the date of the making of the assignment
18 or made between 90 days and one year before the date of making the assignment if
19 the creditor, at the time of the transfer, was an insider and had reasonable cause to
20 believe the debtor was insolvent at the time of the transfer; and

21 (5) That enables the creditor to receive more than another creditor of the same
22 class.

23 (c) The assignee may not recover under this section a transfer:

24 (1) To the extent that the transfer was:

25 (A) Intended by the assignor and the creditor to or for whose benefit the transfer
26 was made to be a contemporaneous exchange for new value given to the assignor;
27 and

28 (B) In fact a substantially contemporaneous exchange;

29 (2) To the extent that the transfer was:

30 (A) In payment of a debt incurred in the ordinary course of business or financial
31 affairs of the assignor and the transferee;

32 (B) Made in the ordinary course of business or financial affairs of the assignor
33 and the transferee; and

34 (C) Made according to ordinary business terms;

35 (3) Of a security interest in property acquired by the assignor:

36 (A) To the extent the security interest secures new value that was:

37 (i) Given at or after the signing of a security agreement that contains a
38 description of the property as collateral;

39 (ii) Given by or on behalf of the secured party under the agreement;

40 (iii) Given to enable the assignor to acquire the property; and

41 (iv) In fact used by the assignor to acquire the property; and

42 (B) That is perfected within 20 days after the security interest attaches;

1 (4) To or for the benefit of a creditor, to the extent that, after the transfer, the
2 creditor gave new value to or for the benefit of the assignor:

3 (A) Not secured by an otherwise unavoidable security interest; and

4 (B) On account of which new value the assignor did not make an otherwise
5 unavoidable transfer to or for the benefit of the creditor;

6 (5) Of a perfected security interest in inventory or a receivable or the proceeds
7 of either, except to the extent that the aggregate of all the transfers to the transferee
8 caused a reduction, as of the date of the making of the assignment and to the
9 prejudice of other creditors holding unsecured claims, of any amount by which the
10 debt secured by the security interest exceeded the value of all security interest for
11 the debt on the later of:

12 (A) Ninety days before the date of the making of the assignment.

13 (B) The date on which new value was first given under the security agreement
14 creating the security interest; or

15 (6) That is the fixing of a statutory lien.

16 (7) That is payment to a claimant, as defined in Section ~~3085~~ 7002 of the Civil
17 Code or Section 41020 of the Public Contract Code, in exchange for the claimant's
18 waiver or release of any potential or asserted claim of lien, stop payment notice, or
19 right to recover on a payment bond, or any combination thereof.

20 (8) To the extent that the transfer was a bona fide payment of a debt to a spouse,
21 former spouse, or child of the debtor, for alimony to, maintenance for, or support
22 of, the spouse or child, in connection with a separation agreement, divorce decree,
23 or other order of a court of record, or a determination made in accordance with
24 state or territorial law by a governmental unit, or property settlement agreement;
25 but not to the extent that either of the following occurs:

26 (A) The debt is assigned to another entity voluntarily, by operation of law or
27 otherwise, in which case, the assignee may not recover that portion of the transfer
28 that is assigned to the state or any political subdivision of the state pursuant to Part
29 D of Title IV of the Social Security Act (42 U.S.C. Sec. 601, et. seq.) and passed
30 on to the spouse, former spouse, or child of the debtor.

31 (B) The debt includes a liability designated as alimony, maintenance, or support,
32 unless the liability is actually in the nature of alimony, maintenance, or support.

33 (d) An assignee of any general assignment for the benefit of creditors (as
34 defined in Section 493.010), may avoid a transfer of property of the assignor
35 transferred to secure reimbursement of a surety that furnished a bond or other
36 obligation to dissolve a judicial lien that would have been avoidable by the
37 assignee under subdivision (b) of this section. The liability of the surety under the
38 bond or obligation shall be discharged to the extent of the value of the property
39 recovered by the assignee or the amount paid to the assignee.

40 (e) (1) For the purposes of this section:

41 (A) A transfer of real property other than fixtures, but including the interest of a
42 seller or purchaser under a contract for the sale of real property, is perfected when
43 a bona fide purchaser of the property from the debtor against whom applicable law

1 permits the transfer to be perfected cannot acquire an interest that is superior to the
2 interest of the transferee.

3 (B) A transfer of a fixture or property other than real property is perfected when
4 a creditor on a simple contract cannot acquire a judicial lien that is superior to the
5 interest of the transferee.

6 (2) For the purposes of this section, except as provided in paragraph (3), a
7 transfer is made at any of the following times:

8 (A) At the time the transfer takes effect between the transferor and the
9 transferee, if the transfer is perfected at, or within 10 days after, the time, except as
10 provided in subparagraph (B) of paragraph (3) of subdivision (c).

11 (B) At the time the transfer is perfected, if the transfer is perfected after the 10
12 days.

13 (C) Immediately before the date of the making of the assignment if the transfer
14 is not perfected at the later of:

15 (i) The making of the assignment.

16 (ii) Ten days after the transfer takes effect between the transferor and the
17 transferee.

18 (3) For the purposes of this section, a transfer is not made until the assignor has
19 acquired rights in the property transferred.

20 (f) For the purposes of this section, the assignor is presumed to have been
21 insolvent on and during the 90 days immediately preceding the date of the making
22 of the assignment.

23 (g) An action by an assignee under this section must be commenced within one
24 year after the making of the assignment.

25 **Comment.** Section 1800 is amended to correct a cross-reference and terminology.

26 EDUCATION CODE

27 **Educ. Code § 17307.5 (amended). Stop work order on public school construction**

28 SEC. _____. Section 17307.5 of the Education Code is amended to read:

29 17307.5. (a) Notwithstanding any provision of law to the contrary, including,
30 but not limited to, ~~Title 15 (commencing with Section 3082) of Part 4 of the Civil~~
31 ~~Code Part 6 (commencing with Section 41010) of Division 2 of the Public~~
32 Contract Code, the Department of General Services may issue a stop work order
33 when construction work on a public school is not being performed in accordance
34 with existing law and would compromise the structural integrity of the building,
35 thereby endangering the public safety. The Department of General Services shall
36 allow construction of incidental and minor nonstructural additions or nonstructural
37 alterations without invoking its stop work authority.

38 (b) A school district, county superintendent of schools, county board of
39 education, or other public board, body, or officer whose construction work on a
40 public school is subject to a stop work order issued pursuant to subdivision (a)
41 shall not be held liable in any action filed against the public board, body, or officer

1 for stopping work as required by the stop work order, or for any delays caused by
2 compliance with the stop work order, except to the extent that an error or omission
3 by the public board, body, or officer is the basis for the issuance of the stop work
4 order.

5 **Comment.** Section 17307.5 is amended to correct a cross-reference.

6 **Educ. Code § 81133.5 (amended). Stop work order on community college construction**

7 SEC. _____. Section 81133.5 of the Education Code is amended to read:

8 81133.5. (a) Notwithstanding any provision of law to the contrary, including,
9 but not limited to, ~~Title 15 (commencing with Section 3082) of Part 4 of the Civil~~
10 ~~Code Part 6 (commencing with Section 41010) of Division 2 of the Public~~
11 Contract Code, the Department of General Services may issue a stop work order
12 when construction work on a community college is not being performed in
13 accordance with existing law and would compromise the structural integrity of the
14 building, thereby endangering the public safety. The Department of General
15 Services shall allow construction of incidental and minor nonstructural additions
16 or nonstructural alterations without invoking its stop work authority.

17 (b) A community college district or other public board, body, or officer whose
18 construction work on a community college is subject to a stop work order issued
19 pursuant to subdivision (a) shall not be held liable in any action filed against the
20 public board, body, or officer for stopping work as required by the stop work
21 order, or for any delays caused by compliance with the stop work order, except to
22 the extent that an error or omission by the public board, body, or officer is that
23 basis for the issuance of the stop work order.

24 **Comment.** Section 81133.5 is amended to correct a cross-reference.

25 GOVERNMENT CODE

26 **Gov't Code § 7480 (amended). Disclosure of financial records**

27 SEC. _____. Section 7480 of the Government Code is amended to read:

28 7480. Nothing in this chapter prohibits any of the following:

29 (a) The dissemination of any financial information that is not identified with, or
30 identifiable as being derived from, the financial records of a particular customer.

31 (b) When any police or sheriff's department or district attorney in this state
32 certifies to a bank, credit union, or savings association in writing that a crime
33 report has been filed that involves the alleged fraudulent use of drafts, checks, or
34 other orders drawn upon any bank, credit union, or savings association in this
35 state, the police or sheriff's department or district attorney may request a bank,
36 credit union, or savings association to furnish, and a bank, credit union, or savings
37 association shall furnish, a statement setting forth the following information with
38 respect to a customer account specified by the police or sheriff's department or
39 district attorney for a period 30 days prior to, and up to 30 days following, the date
40 of occurrence of the alleged illegal act involving the account:

- 1 (1) The number of items dishonored.
- 2 (2) The number of items paid that created overdrafts.
- 3 (3) The dollar volume of the dishonored items and items paid which created
4 overdrafts and a statement explaining any credit arrangement between the bank,
5 credit union, or savings association and customer to pay overdrafts.
- 6 (4) The dates and amounts of deposits and debits and the account balance on
7 these dates.
- 8 (5) A copy of the signature card, including the signature and any addresses
9 appearing on a customer's signature card.
- 10 (6) The date the account opened and, if applicable, the date the account closed.
- 11 (7) A bank, credit union, or savings association that provides the requesting
12 party with copies of one or more complete account statements prepared in the
13 regular course of business shall be deemed to be in compliance with paragraphs
14 (1), (2), (3), and (4).
- 15 (c) When any police or sheriff's department or district attorney in this state
16 certifies to a bank, credit union, or savings association in writing that a crime
17 report has been filed that involves the alleged fraudulent use of drafts, checks, or
18 other orders drawn upon any bank, credit union, or savings association doing
19 business in this state, the police or sheriff's department or district attorney may
20 request, with the consent of the accountholder, the bank, credit union, or savings
21 association to furnish, and the bank, credit union, or savings association shall
22 furnish, a statement setting forth the following information with respect to a
23 customer account specified by the police or sheriff's department or district
24 attorney for a period 30 days prior to, and up to 30 days following, the date of
25 occurrence of the alleged illegal act involving the account:
 - 26 (1) The number of items dishonored.
 - 27 (2) The number of items paid that created overdrafts.
 - 28 (3) The dollar volume of the dishonored items and items paid which created
29 overdrafts and a statement explaining any credit arrangement between the bank,
30 credit union, or savings association and customer to pay overdrafts.
 - 31 (4) The dates and amounts of deposits and debits and the account balance on
32 these dates.
 - 33 (5) A copy of the signature card, including the signature and any addresses
34 appearing on a customer's signature card.
 - 35 (6) The date the account opened and, if applicable, the date the account closed.
 - 36 (7) A bank, credit union, or savings association doing business in this state that
37 provides the requesting party with copies of one or more complete account
38 statements prepared in the regular course of business shall be deemed to be in
39 compliance with paragraphs (1), (2), (3), and (4).
- 40 (d) For purposes of subdivision (c), consent of the accountholder shall be
41 satisfied if an accountholder provides to the financial institution and the person or
42 entity seeking disclosure, a signed and dated statement containing all of the
43 following:

1 (1) Authorization of the disclosure for the period specified in subdivision (c).

2 (2) The name of the agency or department to which disclosure is authorized and,
3 if applicable, the statutory purpose for which the information is to be obtained.

4 (3) A description of the financial records that are authorized to be disclosed.

5 (e) (1) The Attorney General, a supervisory agency, the Franchise Tax Board,
6 the State Board of Equalization, the Employment Development Department, the
7 Controller or an inheritance tax referee when administering the Prohibition of Gift
8 and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the
9 Revenue and Taxation Code), a police or sheriff's department or district attorney,
10 a county welfare department when investigating welfare fraud, a county auditor-
11 controller or director of finance when investigating fraud against the county, or the
12 Department of Corporations when conducting investigations in connection with
13 the enforcement of laws administered by the Commissioner of Corporations, from
14 requesting of an office or branch of a financial institution, and the office or branch
15 from responding to a request, as to whether a person has an account or accounts at
16 that office or branch and, if so, any identifying numbers of the account or
17 accounts.

18 (2) No additional information beyond that specified in this section shall be
19 released to a county welfare department without either the accountholder's written
20 consent or a judicial writ, search warrant, subpoena, or other judicial order.

21 (3) A county auditor-controller or director of finance who unlawfully discloses
22 information he or she is authorized to request under this subdivision is guilty of
23 the unlawful disclosure of confidential data, a misdemeanor, which shall be
24 punishable as set forth in Section 7485.

25 (f) The examination by, or disclosure to, any supervisory agency of financial
26 records that relate solely to the exercise of its supervisory function. The scope of
27 an agency's supervisory function shall be determined by reference to statutes that
28 grant authority to examine, audit, or require reports of financial records or
29 financial institutions as follows:

30 (1) With respect to the Commissioner of Financial Institutions by reference to
31 Division 1 (commencing with Section 99), Division 1.5 (commencing with
32 Section 4800), Division 2 (commencing with Section 5000), Division 5
33 (commencing with Section 14000), Division 7 (commencing with Section 18000),
34 Division 15 (commencing with Section 31000), and Division 16 (commencing
35 with Section 33000) of the Financial Code.

36 (2) With respect to the Controller by reference to Title 10 (commencing with
37 Section 1300) of Part 3 of the Code of Civil Procedure.

38 (3) With respect to the Administrator of Local Agency Security by reference to
39 Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of
40 Title 5 of the Government Code.

41 (g) The disclosure to the Franchise Tax Board of (1) the amount of any security
42 interest that a financial institution has in a specified asset of a customer or (2)
43 financial records in connection with the filing or audit of a tax return or tax

1 information return that are required to be filed by the financial institution pursuant
2 to Part 10 (commencing with Section 17001), Part 11 (commencing with Section
3 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation
4 Code.

5 (h) The disclosure to the State Board of Equalization of any of the following:

6 (1) The information required by Sections 6702, 6703, 8954, 8957, 30313,
7 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443,
8 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205,
9 60404, and 60407 of the Revenue and Taxation Code.

10 (2) The financial records in connection with the filing or audit of a tax return
11 required to be filed by the financial institution pursuant to Part 1 (commencing
12 with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing
13 with Section 8601), Part 13 (commencing with Section 30001), Part 14
14 (commencing with Section 32001), and Part 17 (commencing with Section 37001)
15 of Division 2 of the Revenue and Taxation Code.

16 (3) The amount of any security interest a financial institution has in a specified
17 asset of a customer, if the inquiry is directed to the branch or office where the
18 interest is held.

19 (i) The disclosure to the Controller of the information required by Section 7853
20 of the Revenue and Taxation Code.

21 (j) The disclosure to the Employment Development Department of the amount
22 of any security interest a financial institution has in a specified asset of a customer,
23 if the inquiry is directed to the branch or office where the interest is held.

24 (k) The disclosure by a construction lender, as defined in Section ~~3087~~ 7004 of
25 the Civil Code, to the Registrar of Contractors, of information concerning the
26 making of progress payments to a prime contractor requested by the registrar in
27 connection with an investigation under Section 7108.5 of the Business and
28 Professions Code.

29 (l) Upon receipt of a written request from a local child support agency referring
30 to a support order pursuant to Section 17400 of the Family Code, a financial
31 institution shall disclose the following information concerning the account or the
32 person named in the request, whom the local child support agency shall identify,
33 whenever possible, by social security number:

34 (1) If the request states the identifying number of an account at a financial
35 institution, the name of each owner of the account.

36 (2) Each account maintained by the person at the branch to which the request is
37 delivered, and, if the branch is able to make a computerized search, each account
38 maintained by the person at any other branch of the financial institution located in
39 this state.

40 (3) For each account disclosed pursuant to paragraphs (1) and (2), the account
41 number, current balance, street address of the branch where the account is
42 maintained, and, to the extent available through the branch's computerized search,
43 the name and address of any other person listed as an owner.

1 (4) Whenever the request prohibits the disclosure, a financial institution shall not
2 disclose either the request or its response, to an owner of the account or to any
3 other person, except the officers and employees of the financial institution who are
4 involved in responding to the request and to attorneys, employees of the local
5 child support agencies, auditors, and regulatory authorities who have a need to
6 know in order to perform their duties, and except as disclosure may be required by
7 legal process.

8 (5) No financial institution, or any officer, employee, or agent thereof, shall be
9 liable to any person for (A) disclosing information in response to a request
10 pursuant to this subdivision, (B) failing to notify the owner of an account, or
11 complying with a request under this paragraph not to disclose to the owner, the
12 request or disclosure under this subdivision, or (C) failing to discover any account
13 owned by the person named in the request pursuant to a computerized search of
14 the records of the financial institution.

15 (6) The local child support agency may request information pursuant to this
16 subdivision only when the local child support agency has received at least one of
17 the following types of physical evidence:

18 (A) Any of the following, dated within the last three years:

19 (i) Form 599.

20 (ii) Form 1099.

21 (iii) A bank statement.

22 (iv) A check.

23 (v) A bank passbook.

24 (vi) A deposit slip.

25 (vii) A copy of a federal or state income tax return.

26 (viii) A debit or credit advice.

27 (ix) Correspondence that identifies the child support obligor by name, the bank,
28 and the account number.

29 (x) Correspondence that identifies the child support obligor by name, the bank,
30 and the banking services related to the account of the obligor.

31 (xi) An asset identification report from a federal agency.

32 (B) A sworn declaration of the custodial parent during the 12 months
33 immediately preceding the request that the person named in the request has had or
34 may have had an account at an office or branch of the financial institution to
35 which the request is made.

36 (7) Information obtained by a local child support agency pursuant to this
37 subdivision shall be used only for purposes that are directly connected with the
38 administration of the duties of the local child support agency pursuant to Section
39 17400 of the Family Code.

40 (m) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title
41 42 of the United States Code, upon receipt of an administrative subpoena on the
42 current federally approved interstate child support enforcement form, as approved

1 by the federal Office of Management and Budget, a financial institution shall
2 provide the information or documents requested by the administrative subpoena.

3 (2) The administrative subpoena shall refer to the current federal Office of
4 Management and Budget control number and be signed by a person who states
5 that he or she is an authorized agent of a state or county agency responsible for
6 implementing the child support enforcement program set forth in Part D
7 (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the
8 United States Code. A financial institution may rely on the statements made in the
9 subpoena and has no duty to inquire into the truth of any statement in the
10 subpoena.

11 (3) If the person who signs the administrative subpoena directs a financial
12 institution in writing not to disclose either the subpoena or its response to any
13 owner of an account covered by the subpoena, the financial institution shall not
14 disclose the subpoena or its response to the owner.

15 (4) No financial institution, or any officer, employee, or agent thereof, shall be
16 liable to any person for (A) disclosing information or providing documents in
17 response to a subpoena pursuant to this subdivision, (B) failing to notify any
18 owner of an account covered by the subpoena or complying with a request not to
19 disclose to the owner, the subpoena or disclosure under this subdivision, or (C)
20 failing to discover any account owned by the person named in the subpoena
21 pursuant to a computerized search of the records of the financial institution.

22 (n) The dissemination of financial information and records pursuant to any of
23 the following:

24 (1) Compliance by a financial institution with the requirements of Section 2892
25 of the Probate Code.

26 (2) Compliance by a financial institution with the requirements of Section 2893
27 of the Probate Code.

28 (3) An order by a judge upon a written *ex parte* application by a peace officer
29 showing specific and articulable facts that there are reasonable grounds to believe
30 that the records or information sought are relevant and material to an ongoing
31 investigation of a felony violation of Section 186.10 or of any felony subject to the
32 enhancement set forth in Section 186.11.

33 (A) The *ex parte* application shall specify with particularity the records to be
34 produced, which shall be only those of the individual or individuals who are the
35 subject of the criminal investigation.

36 (B) The *ex parte* application and any subsequent judicial order shall be open to
37 the public as a judicial record unless ordered sealed by the court, for a period of 60
38 days. The sealing of these records may be extended for 60-day periods upon a
39 showing to the court that it is necessary for the continuance of the investigation.
40 Sixty-day extensions may continue for up to one year or until termination of the
41 investigation of the individual or individuals, whichever is sooner.

1 (C) The records ordered to be produced shall be returned to the peace officer
2 applicant or his or her designee within a reasonable time period after service of the
3 order upon the financial institution.

4 (D) Nothing in this subdivision shall preclude the financial institution from
5 notifying a customer of the receipt of the order for production of records unless a
6 court orders the financial institution to withhold notification to the customer upon
7 a finding that the notice would impede the investigation.

8 (E) Where a court has made an order pursuant to this paragraph to withhold
9 notification to the customer under this paragraph, the peace officer or law
10 enforcement agency who obtained the financial information shall notify the
11 customer by delivering a copy of the ex parte order to the customer within 10 days
12 of the termination of the investigation.

13 (4) No financial institution, or any officer, employee, or agent thereof, shall be
14 liable to any person for any of the following:

15 (A) Disclosing information to a probate court pursuant to Sections 2892 and
16 2893.

17 (B) Disclosing information in response to a court order pursuant to paragraph
18 (3).

19 (C) Complying with a court order under this subdivision not to disclose to the
20 customer, the order, or the dissemination of information pursuant to the court
21 order.

22 (o) Disclosure by a financial institution to a peace officer, as defined in Section
23 830.1 of the Penal Code, pursuant to the following:

24 (1) Paragraph (1) of subdivision (a) of Section 1748.95 of the Civil Code,
25 provided that the financial institution has first complied with the requirements of
26 paragraph (2) of subdivision (a) and subdivision (b) of Section 1748.95 of the
27 Civil Code.

28 (2) Paragraph (1) of subdivision (a) of Section 4002 of the Financial Code,
29 provided that the financial institution has first complied with the requirements of
30 paragraph (2) of subdivision (a) and subdivision (b) of Section 4002 of the
31 Financial Code.

32 (3) Paragraph (1) of subdivision (a) of Section 22470 of the Financial Code,
33 provided that any financial institution that is a finance lender has first complied
34 with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of
35 Section 22470 of the Financial Code.

36 (p) When the governing board of the Public Employees' Retirement System or
37 the State Teachers' Retirement System certifies in writing to a financial institution
38 that a benefit recipient has died and that transfers to the benefit recipient's account
39 at the financial institution from the retirement system occurred after the benefit
40 recipient's date of death, the financial institution shall furnish the retirement
41 system the name and address of any coowner, cosigner, or any other person who
42 had access to the funds in the account following the date of the benefit recipient's

1 death, or if the account has been closed, the name and address of the person who
2 closed the account.

3 (q) When the retirement board of a retirement system established under the
4 County Employees Retirement Law of 1937 certifies in writing to a financial
5 institution that a retired member or the beneficiary of a retired member has died
6 and that transfers to the account of the retired member or beneficiary of a retired
7 member at the financial institution from the retirement system occurred after the
8 date of death of the retired member or beneficiary of a retired member, the
9 financial institution shall furnish the retirement system the name and address of
10 any coowner, cosigner, or any other person who had access to the funds in the
11 account following the date of death of the retired member or beneficiary of a
12 retired member, or if the account has been closed, the name and address of the
13 person who closed the account.

14 **Comment.** Section 7480 is amended to correct a cross-reference.

15 **Gov't Code § 14975 (amended). Payment bond**

16 SEC. _____. Section 14975 of the Government Code is amended to read:

17 14975. Notwithstanding the provisions of Section ~~3247 of the Civil Code~~ 45010
18 of the Public Contract Code, the contractor under any contract made under this
19 chapter need not provide a payment bond before the commencement of the work
20 but must provide a payment bond as otherwise required by law prior to payment
21 under the contract.

22 **Comment.** Section 14975 is amended to correct a cross-reference.

23 **Gov't Code § 27287 (amended). Recordation of instrument**

24 SEC. _____. Section 27287 of the Government Code is amended to read:

25 27287. Unless it belongs to the class provided for in either Sections 27282 to
26 27286, inclusive, or Sections 1202 or 1203, of the Civil Code, or is a fictitious
27 mortgage or deed of trust as provided in Sections 2952, or 2963, of the Civil Code,
28 or is a fictitious oil and gas lease as provided in Section 1219 of the Civil Code, or
29 is ~~a claim of lien, as provided in Section 3084 of the Civil Code, or a notice of~~
30 ~~completion, as provided in Section 3093 of the Civil Code~~ an instrument provided
31 for in Section 7056 of the Civil Code or a notice of completion as provided in
32 Section 42230 of the Public Contract Code, before an instrument can be recorded
33 its execution shall be acknowledged by the person executing it, or if executed by a
34 corporation, by its president or secretary or other person executing it on behalf of
35 the corporation, or, except for any quitclaim deed or grant deed other than a
36 trustee's deed or a deed of reconveyance, mortgage, deed of trust, or security
37 agreement, proved by subscribing witness or as provided in Sections 1198 and
38 1199 of the Civil Code, and the acknowledgment or proof certified as prescribed
39 by law.

1 **Comment.** Section 27287 is amended for conformity with the principles governing remedies
2 for a private work of improvement or a public works contract. See Civ. Code § 7056(b) (private
3 work); Pub. Cont. Code § 42230(a) (public work noticed of completion).

4 **Gov't Code § 27361.9 (repealed). Filing fee for preliminary notice**

5 SEC. _____. Section 27361.9 of the Government Code is repealed.

6 ~~27361.9 The board of supervisors of any county may provide for an additional~~
7 ~~fee for filing every preliminary 20 day notice pursuant to paragraph (1) of~~
8 ~~subdivision (e) of Section 3097 of the Civil Code for the exclusive purpose of~~
9 ~~defraying the cost of implementing and maintaining a system to facilitate~~
10 ~~compliance with paragraph (2) of subdivision (e) of Section 3097 of the Civil~~
11 ~~Code.~~

12 **Comment.** Section 27361.9 is not continued. Preliminary notice may no longer be filed with
13 the county recorder. See Civ. Code § 7218.

14 **Gov't Code § 66499.2 (amended). Form of surety bond**

15 SEC. _____. Section 66499.2 of the Government Code is amended to read:

16 66499.2. A bond or bonds by one or more duly authorized corporate sureties for
17 the security of laborers and ~~materialmen~~ material suppliers shall be in substantially
18 the following form:

19 Whereas, The Board of Supervisors of the County of ____ (or City Council of
20 the City of ____), State of California, and ____ (hereinafter designated as “the
21 principal”) have entered into an agreement whereby the principal agrees to install
22 and complete certain designated public improvements, which agreement, dated
23 ____, 20__, and identified as project ____, is hereby referred to and made a part
24 hereof; and

25 Whereas, Under the terms of the agreement, the principal is required before
26 entering upon the performance of the work, to file a good and sufficient payment
27 bond with the County of ____ (or the City of ____) to secure the claims to which
28 reference is made in ~~Title 15 (commencing with Section 3082) of Part 4 of~~
29 ~~Division 3 of the Civil~~ Part 6 (commencing with Section 41010 of Division 2 of
30 the Public Contract Code of the State of California.

31 Now, therefore, the principal and the undersigned as corporate surety, are held
32 firmly bound unto the County of ____ (or the City of ____) and all contractors,
33 subcontractors, laborers, ~~materialmen~~, material suppliers and other persons
34 employed in the performance of the agreement and referred to in ~~Title 15~~
35 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil~~ Part 6
36 (commencing with Section 41010 of Division 2 of the Public Contract Code in the
37 sum of ____ dollars (\$____), for materials furnished or labor thereon of any kind,
38 or for amounts due under the Unemployment Insurance Act with respect to this
39 work or labor, that the surety will pay the same in an amount not exceeding the
40 amount hereinabove set forth, and also in case suit is brought upon this bond, will
41 pay, in addition to the face amount thereof, costs and reasonable expenses and
42 fees, including reasonable attorney's fees, incurred by county (or city) in

1 successfully enforcing this obligation, to be awarded and fixed by the court, and to
2 be taxed as costs and to be included in the judgment therein rendered.

3 It is hereby expressly stipulated and agreed that this bond shall inure to the
4 benefit of any and all persons, companies, and corporations entitled to file claims
5 under ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the~~
6 ~~Civil Part 6 (commencing with Section 41010 of Division 2 of the Public Contract~~
7 Code, so as to give a right of action to them or their assigns in any suit brought
8 upon this bond.

9 Should the condition of this bond be fully performed, then this obligation shall
10 become null and void, otherwise it shall be and remain in full force and effect.

11 The surety hereby stipulates and agrees that no change, extension of time,
12 alteration, or addition to the terms of the agreement or the specifications
13 accompanying the same shall in any manner affect its obligations on this bond,
14 and it does hereby waive notice of any such change, extension, alteration, or
15 addition.

16 In witness whereof, this instrument has been duly executed by the principal and
17 surety above named, on ____, 20__.

18 **Comment.** Section 66499.2 is amended to correct cross-references and obsolete terminology.

19 **Gov't Code § 66499.7 (amended). Release of improvement security**

20 SEC. _____. Section 66499.7 of the Government Code is amended to read:

21 66499.7. The security furnished by the subdivider shall be released in whole or
22 in part in the following manner:

23 (a) Security given for faithful performance of any act or agreement shall be
24 released upon the performance of the act or final completion and acceptance of the
25 required work. The legislative body may provide for the partial release of the
26 security upon the partial performance of the act or the acceptance of the work as it
27 progresses, consistent with the provisions of this section. The security may be a
28 surety bond, a cash deposit, a letter of credit, escrow account, or other form of
29 performance guarantee required as security by the legislative body that meets the
30 requirements as acceptable security pursuant to law. If the security furnished by
31 the subdivider is a documentary evidence of security such as a surety bond or a
32 letter of credit, the legislative body shall release the documentary evidence and
33 return the original to the issuer upon performance of the act or final completion
34 and acceptance of the required work. In the event that the legislative body is
35 unable to return the original documentary evidence to the issuer, the security shall
36 be released by written notice sent by certified mail to the subdivider and issuer of
37 the documentary evidence within 30 days of the acceptance of the work. The
38 written notice shall contain a statement that the work for which the security was
39 furnished has been performed or completed and accepted by the legislative body, a
40 description of the project subject to the documentary evidence and the notarized
41 signature of the authorized representative of the legislative body.

1 (b) At such time that the subdivider believes that the obligation to perform the
2 work for which security was required is complete, the subdivider may notify the
3 public entity in writing of the completed work, including a list of work completed.
4 Upon receipt of the written notice, the public entity shall have 45 days to review
5 and comment or approve the completion of the required work. If the public entity
6 does not agree that all work has been completed in accordance with the plans and
7 specifications for the improvements, it shall supply a list of all remaining work to
8 be completed.

9 (c) Within 45 days of receipt of the list of remaining work from the public
10 entity, the subdivider may then provide cost estimates for all remaining work for
11 review and approval by the public entity. Upon receipt of the cost estimates, the
12 public entity shall then have 45 days to review, comment, and approve, modify, or
13 disapprove those cost estimates. No public entity shall be required to engage in
14 this process of partial release more than once between the start of work and
15 completion and acceptance of all work; however, nothing in this section prohibits
16 a public entity from allowing for a partial release as it otherwise deems
17 appropriate.

18 (d) If the public entity approves the cost estimate, the public entity shall release
19 all performance security except for security in an amount up to 200 percent of the
20 cost estimate of the remaining work. The process allowing for a partial release of
21 performance security shall occur when the cost estimate of the remaining work
22 does not exceed 20 percent of the total original performance security unless the
23 public entity allows for a release at an earlier time. Substitute bonds or other
24 security may be used as a replacement for the performance security, subject to the
25 approval of the public entity. If substitute bonds or other security is used as a
26 replacement for the performance security released, the release shall not be
27 effective unless and until the public entity receives and approves that form of
28 replacement security. A reduction in the performance security, authorized under
29 this section, is not, and shall not be deemed to be, an acceptance by the public
30 entity of the completed improvements, and the risk of loss or damage to the
31 improvements and the obligation to maintain the improvements shall remain the
32 sole responsibility of the subdivider until all required public improvements have
33 been accepted by the public entity and all other required improvements have been
34 fully completed in accordance with the plans and specifications for the
35 improvements.

36 (e) The subdivider shall complete the works of improvement until all remaining
37 items are accepted by the public entity.

38 (f) Upon the completion of the improvements, the subdivider, or his or her
39 assigns, shall be notified in writing by the public entity within 45 days.

40 (g) Within 45 days of the issuance of the notification by the public entity, the
41 release of any remaining performance security shall be placed upon the agenda of
42 the legislative body of the public entity for approval of the release of any
43 remaining performance security. If the public entity delegates authority for the

1 release of performance security to a public official or other employee, any
2 remaining performance security shall be released within 60 days of the issuance of
3 the written statement of completion.

4 (h) Security securing the payment to the contractor, his or her subcontractors
5 and to persons furnishing labor, materials or equipment shall, after passage of the
6 time within which claims of lien are required to be recorded pursuant to ~~Article 3~~
7 ~~(commencing with Section 3114) of Chapter 2 of Title 15 of Part 4 of Division 3~~
8 Article 2 (commencing with Section 7410) of Chapter 4 of Part 6 of Division 4 of
9 the Civil Code and after acceptance of the work, be reduced to an amount equal to
10 the total claimed by all claimants for whom claims of lien have been recorded and
11 notice thereof given in writing to the legislative body, and if no claims have been
12 recorded, the security shall be released in full.

13 (i) The release shall not apply to any required guarantee and warranty period
14 required by Section 66499.9 for the guarantee or warranty nor to the amount of the
15 security deemed necessary by the local agency for the guarantee and warranty
16 period nor to costs and reasonable expenses and fees, including reasonable
17 attorneys' fees.

18 (j) The legislative body may authorize any of its public officers or employees to
19 authorize release or reduction of the security in accordance with the conditions
20 hereinabove set forth and in accordance with any rules that it may prescribe.

21 (k) This section shall remain in effect only until January 1, 2011, and as of that
22 date is repealed, unless a later enacted statute, that is enacted before January 1,
23 2011, deletes or extends that date.

24 **Comment.** Section 66499.7 is amended to correct a cross-reference.

25 HEALTH AND SAFETY CODE

26 **Health & Safety Code § 5463 (amended). Sewer system construction**

27 SEC. _____. Section 5463 of the Health and Safety Code is amended to read:

28 5463. Any health officer or governing board of any city, county, sanitary
29 district, or other district having the power to operate and maintain a sewerage
30 system, having served written notice upon the owner or reputed owner of land
31 upon which there is a dwelling house, and such owner or reputed owner, after 30
32 days, having refused, neglected, or failed to connect such dwelling house, together
33 with all toilets, sinks, and other plumbing therein, properly vented, and in a
34 sanitary manner, with the adjoining street sewer, may construct the same at a
35 reasonable cost, and the person doing said work at the request of such health
36 officer or governing board has a lien upon said real estate for his work done and
37 materials furnished, and such work done and materials furnished shall be held to
38 have been done and furnished at the instance of such owner or reputed owner, or
39 person claiming or having any interest therein. Such governing board may pay all
40 or any part of the cost or price of such connection to the person or persons who
41 furnished labor, materials, or equipment for the same, and, to the extent such

1 governing board pays the cost or price of said connection, it shall succeed to and
2 have all the rights, including the lien provided for above, of such person or persons
3 against the real estate and against the owner or reputed owner thereof.

4 As an alternative power to the enforcement of the lien provided for in this
5 section, the governing body of the public agency performing the work of
6 connection to the public sewer may, by order entered upon its minutes, declare
7 that the amount of the costs of such work and the administrative expenses incurred
8 by the governing body incident to the proceedings, together with other charges
9 uniformly applicable within the jurisdiction of the governing body for the
10 connection of the premises to the public sewer, shall be transmitted to the assessor
11 and tax collector of the public agency, whereupon it shall be the duty of those
12 officers to add the amount of the assessment to the next regular bill for taxes
13 levied against the lot or parcel of land.

14 The liens provided for by this section shall be enforced in the same manner as
15 those provided for by ~~Title 15 (commencing with Section 3082), Part 4, Division~~
16 ~~3, Part 6 (commencing with Section 7000) of Division 4~~ of the Civil Code.

17 The governing board may also use the procedures in Section 5474 for levying
18 the costs incurred for the construction of the improvements for the connection of
19 the premises to the public sewer.

20 **Comment.** Section 5463 is amended to correct a cross-reference.

21 **Health & Safety Code § 16017.5 (amended). Stop work order**

22 SEC. _____. Section 16017.5 of the Health and Safety Code is amended to read:

23 16017.5. (a) Notwithstanding any provision of law to the contrary, including,
24 but not limited to, ~~Title 15 (commencing with Section 3082) of Part 4~~ Part 6
25 (commencing with Section 7000) of Division 4 of the Civil Code, the Department
26 of General Services may issue a stop work order when construction work on an
27 essential services facility is not being performed in accordance with existing law
28 and would compromise the structural integrity of the building, thereby
29 endangering the public safety. The Department of General Services shall allow
30 construction of incidental and minor nonstructural additions or nonstructural
31 alterations without invoking its stop work authority.

32 (b) A public board, body, or officer whose construction work on an essential
33 services facility is subject to a stop work order issued pursuant to subdivision (a)
34 shall not be held liable in any action filed against the public board, body, or officer
35 for stopping work as required by the stop work order, or for any delays caused by
36 compliance with the stop work order, except to the extent that an error or omission
37 by the public board, body, or officer is the basis for the issuance of the stop work
38 order.

39 **Comment.** Section 16017.5 is amended to correct a cross-reference.

40 **Health & Safety Code § 19825 (amended). Building permit**

41 SEC. _____. Section 19825 of the Health and Safety Code is amended to read:

1 19825. Every city or county that requires the issuance of a permit as a condition
2 precedent to the construction, alteration, improvement, demolition, or repair of any
3 building or structure shall, in addition to any other requirements, require the
4 following declarations in substantially the following form upon the issuance of
5 any building permit:

6 **BUILDING PROJECT IDENTIFICATION**

7 Applicant's Mailing Address

8 _____
9 _____

10 Address of Building

11 _____
12 _____

13 Owner's Name if Known

14 _____

15 Telephone No.

16 _____

17 Contractor's Name

18 _____

19 Contractor's Mailing Address

20 _____
21 _____

22 Lic. No. _____

23 Architect or Engineer

24 _____

25 Architect's or Engineer's Address

26 _____
27 _____

28 Lic. No. _____

29 In addition the city or county may require that there be included, in the building
30 project identification portion of a building permit, the following:

31 Assessor's Parcel Number*

32 _____

33 Permit Date

34 _____

35 Permit Number

36 _____

37 Description of Work

38 _____

39 Building Permit Valuation

40 _____

41 *To be entered by issuing agency.

42

1 LICENSED CONTRACTOR’S DECLARATION

2 I hereby affirm under penalty of perjury that I am licensed under provisions of
3 Chapter 9 (commencing with Section 7000) of Division 3 of the Business and
4 Professions Code, and my license is in full force and effect.

5 License Class _____ Lic. No. _____

6 Date _____ Contractor _____

7 OWNER-BUILDER DECLARATION

8 I hereby affirm under penalty of perjury that I am exempt from the Contractors’
9 State License Law for the following reason (Sec. 7031.5, Business and Professions
10 Code: Any city or county that requires a permit to construct, alter, improve,
11 demolish, or repair any structure, prior to its issuance, also requires the applicant
12 for the permit to file a signed statement that he or she is licensed pursuant to the
13 provisions of the Contractors’ State License Law (Chapter 9 (commencing with
14 Section 7000) of Division 3 of the Business and Professions Code) or that he or
15 she is exempt therefrom and the basis for the alleged exemption. Any violation of
16 Section 7031.5 by any applicant for a permit subjects the applicant to a civil
17 penalty of not more than five hundred dollars (\$500).):

18 I, as owner of the property, or my employees with wages as their sole
19 compensation, will do the work, and the structure is not intended or offered for
20 sale (Sec. 7044, Business and Professions Code: The Contractors’ State License
21 Law does not apply to an owner of property who builds or improves thereon, and
22 who does the work himself or herself or through his or her own employees,
23 provided that the improvements are not intended or offered for sale. If, however,
24 the building or improvement is sold within one year of completion, the owner-
25 builder will have the burden of proving that he or she did not build or improve for
26 the purpose of sale.).

27 I, as owner of the property, am exclusively contracting with licensed
28 contractors to construct the project (Sec. 7044, Business and Professions Code:
29 The Contractors’ State License Law does not apply to an owner of property who
30 builds or improves thereon, and who contracts for the projects with a contractor(s)
31 licensed pursuant to the Contractors’ State License Law.).

32 I am exempt under Sec. _____, B.& P.C. for this reason

33 _____
34 Date _____ Owner _____

35 WORKERS’ COMPENSATION DECLARATION

36 I hereby affirm under penalty of perjury one of the following declarations: ___ I
37 have and will maintain a certificate of consent to self-insure for workers’
38 compensation, as provided for by Section 3700 of the Labor Code, for the
39 performance of the work for which this permit is issued. ___ I have and will
40 maintain workers’ compensation insurance, as required by Section 3700 of the
41 Labor Code, for the performance of the work for which this permit is issued. My
42 workers’ compensation insurance carrier and policy number are:

43 Carrier _____

1 Policy Number _____

2 I certify that, in the performance of the work for which this permit is issued, I
3 shall not employ any person in any manner so as to become subject to the
4 workers' compensation laws of California, and agree that, if I should become
5 subject to the workers' compensation provisions of Section 3700 of the Labor
6 Code, I shall forthwith comply with those provisions.

7 Date: _____ Applicant: _____

8 WARNING: FAILURE TO SECURE WORKERS' COMPENSATION
9 COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO
10 CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED
11 THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF
12 COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF
13 THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

14 CONSTRUCTION LENDING AGENCY

15 I hereby affirm under penalty of perjury that there is a construction lending
16 agency for the performance of the work for which this permit is issued (Sec. ~~3097~~
17 7132, Civ. C.).

18 Lender's Name _____

19 Branch Designation _____

20 Lender's Address _____

21 I certify that I have read this application and state that the above information is
22 correct. I agree to comply with all city and county ordinances and state laws
23 relating to building construction, and hereby authorize representatives of this
24 county to enter upon the above-mentioned property for inspection purposes.

25 _____
26 Signature of Applicant or Agent Date

27 **Comment.** Section 19825 is amended to correct a cross-reference and conform the provision to
28 Civil Code Section 7132 (designation of construction lender on building permit).

29 **Health & Safety Code § 34218 (amended). Comprehensive improvement assistance**
30 **program housing projects**

31 SEC. _____. Section 34218 of the Health and Safety Code is amended to read:
32 ~~34218. Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of~~
33 ~~Division 3 of the Civil Code Chapter 5 (commencing with Section 45010) of Part~~
34 6 of Division 2 of the Public Contract Code applies to any housing project
35 constructed under this chapter. Notwithstanding the provisions of this section, a
36 housing authority may require a 20 percent cash escrow or a 25 percent
37 irrevocable letter of credit or the payment bond required by this section if the
38 contract is for work undertaken pursuant to the Comprehensive Improvement
39 Assistance Program established by Section 14 of the United States Housing Act of
40 1937, as amended (42 U.S.C.A. Secs. 1437d and 1437l), or the Public Housing
41 Modernization Act established by Section 5(c)(3)(C) of the United States Housing
42 Act of 1937, as amended (42 U.S.C.A. Secs. 1437d and 1437l).

1 **Comment.** Section 34218 is amended to correct a cross-reference.

2 INSURANCE CODE

3 **Ins. Code § 11751.82 (amended). Wrap-up insurance policy**

4 SEC. _____. Section 11751.82 of the Insurance Code is amended to read:

5 11751.82. (a) An insurer under a wrap-up insurance policy shall report workers'
6 compensation losses and payroll information for each contractor and subcontractor
7 to its rating organization on a timely basis and in accordance with the uniform
8 statistical plan. Within 10 days, upon request, the insurer shall provide to each
9 contractor and subcontractor copies of the report covering workers' compensation
10 losses and payroll information for that contractor or subcontractor.

11 (b) For the purposes of this section, a "wrap-up insurance policy" is an insurance
12 policy, or series of policies, written to cover risks associated with a work of
13 improvement, as defined in Section ~~3106~~ 7046 of the Civil Code, and covering
14 two or more of the contractors or subcontractors that work on that work of
15 improvement.

16 **Comment.** Section 11751.82 is amended to correct a cross-reference.

17 LABOR CODE

18 **Lab. Code § 218.5 (amended). Nonpayment action**

19 SEC. _____. Section 218.5 of the Labor Code is amended to read:

20 218.5. In any action brought for the nonpayment of wages, fringe benefits, or
21 health and welfare or pension fund contributions, the court shall award reasonable
22 attorney's fees and costs to the prevailing party if any party to the action requests
23 attorney's fees and costs upon the initiation of the action. This section shall not
24 apply to an action brought by the Labor Commissioner. This section shall not
25 apply to a surety issuing a bond pursuant to Chapter 9 (commencing with Section
26 7000) of Division 3 of the Business and Professions Code or to an action to
27 enforce a mechanics lien brought under ~~Chapter 2 (commencing with Section~~
28 ~~3109) of Title 15 of Part 4 of Division 3~~ Chapter 4 (commencing with Section
29 7400) of Part 6 of Division 4 of the Civil Code.

30 This section does not apply to any action for which attorney's fees are
31 recoverable under Section 1194.

32 **Comment.** Section 218.5 is amended to correct a cross-reference.

33 PUBLIC CONTRACT CODE

34 **Pub. Cont. Code § 4107.7 (amended). Hazardous waste contract**

35 SEC. _____. Section 4107.7 of the Public Contract Code is amended to read:

36 4107.7 If a contractor who enters into a contract with a public entity for
37 investigation, removal or remedial action, or disposal relative to the release or

1 presence of a hazardous material or hazardous waste fails to pay a subcontractor
2 registered as a hazardous waste hauler pursuant to Section 25163 of the Health and
3 Safety Code within 10 days after the investigation, removal or remedial action, or
4 disposal is completed, the subcontractor may serve a stop payment notice upon the
5 public entity in accordance with ~~Chapter 4 (commencing with Section 3179) of~~
6 ~~Title 15 of Part 4 of Division 3 of the Civil Code~~ Chapter 4 (commencing with
7 Section 44110) of Part 6 of Division 2 of this code.

8 **Comment.** Section 4107.7 is amended to correct a cross-reference and terminology.

9 **Pub. Cont. Code § 7103 (amended). Payment bond on state contract**

10 SEC. _____. Section 7103 of the Public Contract Code is amended to read:

11 7103. (a) Every original contractor ~~to who~~ that is awarded a contract by a state
12 entity, as defined in subdivision (d), involving an expenditure in excess of five
13 thousand dollars (\$5,000) for any public work shall, before entering up the
14 performance of the work, file a payment bond with and approved by the officer or
15 state entity ~~by who that awarded the contract was awarded.~~ The bond shall be in a
16 sum not less than one hundred percent of the total amount payable by the terms of
17 the contract.

18 The state entity shall state in its call for bids for any contract that a payment
19 bond is required in the case of such an expenditure.

20 (b) A payment bond filed and approved in accordance with this section shall be
21 sufficient to enter upon the performance of work under a duly authorized contract
22 which supplements the contract for which the payment bond was filed if the
23 requirement of a new bond is waived by the state entity.

24 (c) For purposes of this section, providers of architectural, engineering and land
25 surveying services pursuant to a contract with a state entity for a public work shall
26 not be deemed an original contractor and shall not be required to post or file the
27 payment bond required in subdivisions (a) and (b).

28 (d) For purposes of this section, “state entity” means every state office
29 department, division, bureau, board, or commission, but does not include the
30 Legislature, the courts, any agency in the judicial branch of government, or the
31 University of California. All other public entities shall be governed by the
32 provisions of ~~Section 3247 of the Civil Code~~ Section 45010.

33 (e) For purposes of this section, “public work” includes the erection,
34 construction, alteration, repair or improvement of any state structure, building,
35 road, or other state improvement of any kind.

36 **Comment.** Section 7103 is amended to correct a cross-reference and grammatical errors.

37 **Pub. Cont. Code § 10222 (amended). Amount of payment bond**

38 SEC. _____. Section 10222 of the Public Contract Code is amended to read:

39 10222. (a) Each bond shall equal at least one-half of the contract price, except as
40 otherwise provided in ~~Section 3248 of the Civil Code~~ Section 45030, in the

1 California Toll Bridge Authority Act (Chapter 1 (commencing with Section
2 30000) of Division 7 of the Streets and Highways Code), or in subdivision (b).

3 (b) Notwithstanding subdivision (a), for projects with a contract price greater
4 than two hundred fifty million dollars (\$250,000,000), the Department of
5 Transportation shall have the discretion to specify that the payment bond shall
6 equal not less than one-half of the contract price or five hundred million dollars
7 (\$500,000,000), whichever is less.

8 **Comment.** Section 10222 is amended to correct a cross-reference.

9 **Pub. Cont. Code § 10822 (amended). Amount of bond**

10 SEC. _____. Section 10822 of the Public Contract Code is amended to read:

11 10822. Each bond shall be in a sum equal to at least one-half of the contract
12 price, except as otherwise provided in ~~Section 3248 of the Civil Code~~ Section
13 45030.

14 **Comment.** Section 10822 is amended to correct a cross-reference.

15 **Pub. Cont. Code § 20104 (amended). Resolution of construction claims**

16 SEC. _____. Section 20104 of the Public Contract Code is amended to read:

17 20104. (a) (1) This article applies to all public works claims of three hundred
18 seventy-five thousand dollars (\$375,000) or less which arise between a contractor
19 and a local agency.

20 (2) This article shall not apply to any claims resulting from a contract between a
21 contractor and a public agency when the public agency has elected to resolve any
22 disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of
23 Part 2.

24 (b) (1) “Public work” ~~has the same meaning as in Sections 3100 and 3106 of the~~
25 ~~Civil Code, except that “public work”~~ means “public works contract” as defined in
26 Section 1101 but does not include any work or improvement contracted for by the
27 state or the Regents of the University of California.

28 (2) “Claim” means a separate demand by the contractor for (A) a time extension,
29 (B) payment of money or damages arising from work done by, or on behalf of, the
30 contractor pursuant to the contract for a public work and payment of which is not
31 otherwise expressly provided for or the claimant is not otherwise entitled to, or (C)
32 an amount the payment of which is disputed by the local agency.

33 (c) The provisions of this article or a summary thereof shall be set forth in the
34 plans or specifications for any work which may give rise to a claim under this
35 article.

36 (d) This article applies only to contracts entered into on or after January 1, 1991.

37 **Comment.** Section 20104 is amended to correct cross-references.

38 **Pub. Cont. Code § 20134 (amended). Emergency repairs**

39 SEC. _____. Section 20134 of the Public Contract Code is amended to read:

1 20134. (a) In cases of emergency, when repair or replacements are necessary to
2 permit the continued conduct of county operations or services, the board of
3 supervisors, by majority consent, may proceed at once to replace or repair any and
4 all structures without adopting the plans, specifications, strain sheets, or working
5 details or, subject to Chapter 2.5 (commencing with Section 22050), giving notice
6 for bids to let contracts. If notice for bids to let contracts will not be given, the
7 board shall comply with Chapter 2.5 (commencing with Section 22050). The work
8 may be done by day labor under the direction of the board, by contract, or by a
9 combination of the two. If the work is done wholly or in part by contract, the
10 contractor shall be paid the actual cost of the use of machinery and tools and of
11 material, and labor and of workers' compensation insurance expended by him or
12 her in doing the work, plus not more than 15 percent to cover all profits and
13 administration. No more than the lowest current market prices shall be paid for
14 materials whenever possible.

15 (b) In a county of the first, second, third, or fourth class, which is under court
16 order to relieve jail overcrowding or in which the sheriff certifies that the inmate
17 capacity of the county jail system is exceeded by more than 20 percent and that the
18 overpopulation is likely to continue and poses a threat to public safety, health, and
19 welfare, the board of supervisors may contract for the construction or expansion of
20 jail facilities without the formality of obtaining bids, adopting plans and
21 specifications, or complying with other requirements of this article, except as
22 required by this subdivision. The person to whom the contract is awarded shall
23 execute a bond for faithful performance in accordance with Section 20129. Any
24 plans and specifications adopted by the board may only be altered or changed in
25 accordance with Section 20135 and all contracts awarded pursuant to this
26 subdivision may only be altered or changed in accordance with Sections 20136,
27 20137, and 20138. The award of the contract shall be made after a public hearing
28 on the basis of a request for proposals advertised in accordance with Section 6062
29 or 6062a of the Government Code. The contract may be awarded only to a
30 contractor who has responded to the request for proposals and who is licensed to
31 do the work in accordance with Chapter 9 (commencing with Section 7000) of
32 Division 3 of the Business and Professions Code. The contract shall be upon terms
33 which the board determines are necessary for the expeditious completion of the
34 work. A contract shall not be entered into unless at least three proposals to do the
35 work have been evaluated by a competitive process established by the board. If the
36 board does not select the lowest bid, it shall make a finding stating the reasons that
37 the lowest bid was not selected.

38 (c) In any county that has agreed to permit the transfer of prisoners or parole
39 violators under Section 2910 or 2910.5 of the Penal Code or of wards under
40 Section 1753.3 of the Welfare and Institutions Code, the board of supervisors may
41 contract for the construction or expansion of the facilities to be used for that
42 purpose without the formality of obtaining bids, adopting plans and specifications,
43 or complying with other requirements of this article, except as required by this

1 subdivision. The person to whom the contract is awarded shall execute a bond for
2 faithful performance in accordance with Section 20129. Any plans and
3 specifications adopted by the board may only be altered or changed in accordance
4 with Section 20135 and all contracts awarded pursuant to this subdivision may
5 only be altered or changed in accordance with Sections 20136, 20137, and 20138.
6 The award of the contract shall be made after a public hearing on the basis of a
7 request for proposals advertised in accordance with Section 6062 or 6062a of the
8 Government Code. The contract may be awarded only to a contractor who has
9 responded to the request for proposals and who is licensed to do the work in
10 accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the
11 Business and Professions Code. The contract shall be upon terms which the board
12 determines are necessary for the expeditious completion of the work. A contract
13 shall not be entered into unless at least three proposals to do the work have been
14 evaluated by a competitive process established by the board and the lowest bid is
15 selected.

16 (d) Proposed construction or expansion of jail or return-to-custody facilities as
17 authorized under subdivision (b) or (c) shall not commence in a county of the third
18 class without the affirmative vote of a majority of the city council of the
19 incorporated city within which the construction or expansion is proposed.

20 (e) The board of supervisors may waive the requirements of ~~Title 15~~
21 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6
22 (commencing with Section 41010) for work performed pursuant to subdivision (b)
23 or (c).

24 (f) If any county that is under court order to relieve overcrowding in a county
25 juvenile facility, as defined by subdivision (c) of Section 4481 of the Penal Code
26 or in which the chief probation officer certifies that the juvenile detention capacity
27 of the county juvenile facilities is exceeded by more than 20 percent and that the
28 overpopulation is likely to continue and poses a threat to public safety, health, and
29 welfare, the board of supervisors may contract for the construction or expansion of
30 county juvenile facilities without the formality of obtaining bids, adopting plans
31 and specifications, or complying with other requirements of this article, except as
32 required by this subdivision. The person to whom the contract is awarded shall
33 execute a bond for faithful performance in accordance with Section 20129. Any
34 plans and specifications adopted by the board may only be altered or changed in
35 accordance with Section 20135 and all contracts awarded pursuant to this
36 subdivision may only be altered or changed in accordance with Sections 20136,
37 20137, and 20138. The award of the contract shall be made after a public hearing
38 on the basis of a request for proposals advertised in accordance with Section 6062
39 or 6062a of the Government Code. The contract may be awarded only to a
40 contractor who has responded to the request for proposals and who is licensed to
41 do the work in accordance with Chapter 9 (commencing with Section 7000) of
42 Division 3 of the Business and Professions Code. The contract shall be upon terms
43 which the board determines are necessary for the expeditious completion of the

1 work. A contract shall not be entered into unless at least three proposals to do the
2 work have been evaluated by a competitive process established by the board. If the
3 board does not select the lowest bidder, it shall make a finding stating the reasons
4 that the lowest bidder was not selected.

5 (g) In a county of the third class in which there are no available courtrooms to
6 accommodate all authorized judicial positions or in which the board of supervisors
7 certifies that there is a significant need to expeditiously construct new court and
8 court support facilities, the board of supervisors may contract for the construction
9 or expansion of court and court support facilities without the formality of
10 obtaining bids, adopting plans and specifications, or complying with other
11 requirements of this article, except as required by this subdivision. The person to
12 whom the contract is awarded shall execute a bond for faithful performance in
13 accordance with Section 20129. Any plans and specifications adopted by the board
14 may only be altered or changed in accordance with Section 20135 and all contracts
15 awarded pursuant to this subdivision may only be altered or changed in
16 accordance with Sections 20136, 20137, and 20138. The award of the contract
17 shall be made after a public hearing on the basis of a request for proposals
18 advertised in accordance with Section 6062 or 6062a of the Government Code.
19 The contract may be awarded only to a contractor who has responded to the
20 request for proposals and who is licensed to do the work in accordance with
21 Chapter 9 (commencing with Section 7000) of Division 3 of the Business and
22 Professions Code. The contract shall be upon terms which the board determines
23 are necessary for the expeditious completion of the work. A contract shall not be
24 entered into unless at least three proposals to do the work have been evaluated by
25 a competitive process established by the board and the lowest bid is selected. This
26 subdivision shall remain in effect until December 31, 1994.

27 **Comment.** Section 20134 is amended to correct a cross-reference.

28 **Note.** The last sentence of Section 20134(g) states that “[t]his subdivision shall remain in
29 effect until December 31, 1994.” Should subdivision (g) be deleted as obsolete?

30 **Pub. Cont. Code § 20461 (amended). Assignment by contractor**

31 SEC. _____. Section 20461 of the Public Contract Code is amended to read:

32 20461. No assignment by the contractor of the whole or any part of the money,
33 assessment, partial assessment, any reassessment and any bonds which may be
34 issued to represent any assessment or reassessment, due ~~him~~ or to be due ~~him~~
35 under the contract, or for “extras” in connection therewith, whether made before or
36 after a verified claim is filed pursuant to this chapter, shall take priority over ~~such~~
37 the claims, and ~~such~~ the assignment shall have no binding force insofar as the
38 rights of the claimants, or their assigns, are concerned. None of the provisions of
39 ~~Title 15 (commencing with Section 3082), Part 4, Division 3, of the Civil Code,~~
40 Part 6 (commencing with Section 41010) shall be applicable to any assessment,
41 partial assessment, reassessment, bonds, moneys or funds payable to the contractor
42 or ~~his~~ assignee under this division or to any matter contained in this chapter.

1 **Comment.** Section 20461 is amended to correct a cross-reference. The other changes are
2 technical.

3 **Pub. Cont. Code § 20496 (amended). Municipal Improvement Act of 1913**

4 SEC. _____. Section 20496 of the Public Contract Code is amended to read:
5 20496. The provisions of ~~Title 15 (commencing with Section 3082), Part 4,~~
6 ~~Division 3, of the Civil Code~~ Part 6 (commencing with Section 41010) are hereby
7 expressly made applicable to the construction of works and improvements under
8 this article.

9 **Comment.** Section 20496 is amended to correct a cross-reference.

10 **Pub. Cont. Code § 20682.5 (amended). Bids for contract**

11 SEC. _____. Section 20682.5 of the Public Contract Code is amended to read:
12 20682.5. (a) A district may construct or complete any building, structure, or
13 improvement with its own forces or by contract without bidding when the cost
14 does not exceed twenty-five thousand dollars (\$25,000).

15 (b) All contracts for the construction or completion of any building, structure, or
16 improvement, when the cost exceeds twenty-five thousand dollars (\$25,000), shall
17 be contracted for and let to the lowest responsible bidder after notice. If two or
18 more bids are the same and the lowest, the district board may accept the one it
19 chooses.

20 (c) The district shall publish a notice inviting bids for any contract for which
21 competitive bidding is required at least one time in a newspaper of general
22 circulation in the district at least 10 days before the time specified for receiving
23 bids. The notice inviting bids shall set a date for opening the bids and distinctly
24 state the work to be done.

25 (d) If the general manager recommends and the board of directors determines
26 that the publication of advertisements of the notice in trade journals and papers in
27 lieu of publication pursuant to subdivision (c) will increase the number of business
28 enterprises receiving that notice, the board of directors may by resolution declare
29 that those notices shall be published in trade journals and papers at least 10 days
30 prior to the time specified for receiving bids.

31 (e) If plans and specifications are prepared describing the work, all bidders shall
32 be afforded an opportunity to examine the plans and specifications, and the plans
33 and specifications shall be attached to and become part of the contract, if one is
34 awarded.

35 (f) At its discretion, the board of directors may reject any bids presented and
36 readvertise.

37 (g) In the case of an emergency, the board of directors may act pursuant to
38 Chapter 2.5 (commencing with Section 22050).

39 (h) The board of directors may, subject to ~~Chapter 7 (commencing with Section~~
40 ~~3247) of Title 15 of Part 4 of Division 3 of the Civil Code~~ Chapter 5 (commencing

1 with Section 45010) of Part 6 of Division 2, require the posting of those bonds it
2 deems desirable as a condition to the filing of a bid or the letting of a contract.

3 (i) The district shall keep cost records of the work in the manner provided in
4 Chapter 1 (commencing with Section 4000) of Division 5 of Title 1 of the
5 Government Code.

6 (j) As an alternate to the procedures required by this section, a district may rely
7 on the Uniform Public Construction Cost Accounting Act, Chapter 2
8 (commencing with Section 22000) of Part 3 of Division 2.

9 **Comment.** Section 20682.5 is amended to correct a cross-reference.

10 **Pub. Cont. Code § 20688.4 (amended). Redevelopment agencies**

11 SEC. _____. Section 20688.4 of the Public Contract Code is amended to read:

12 20688.4 An agency shall require each successful bidder to file with it good and
13 sufficient bonds, to be approved by it. The bonds shall be conditioned upon the
14 faithful performance of the contract and upon the payment of all claims for labor
15 and material in connection with the contract. The bonds shall contain the terms
16 and conditions set forth in ~~Chapter 7 (commencing with Section 3247) of Title 15~~
17 ~~of Part 4 of Division 3 of the Civil Code~~ Chapter 5 (commencing with Section
18 45010) of Part 6 and are subject to the provisions of that chapter.

19 **Comment.** Section 20688.4 is amended to correct a cross-reference.

20 **Pub. Cont. Code § 20813 (amended). Fire protection districts**

21 SEC. _____. Section 20813 of the Public Contract Code is amended to read:

22 20813. (a) All contracts for the construction or completion of any building,
23 structure, or improvement, when the expenditure required for the work exceeds ten
24 thousand dollars (\$10,000), shall be contracted for and let to the lowest
25 responsible bidder after notice. If two or more bids are the same and the lowest,
26 the district board may accept the one it chooses.

27 (b) The notice inviting bids shall set a date for the opening of bids. The first
28 publication or posting of the notice shall be at least 10 days before the date of
29 opening the bids. Notice shall be published at least twice, not less than five days
30 apart, in a newspaper of general circulation in the district, or if there is none, it
31 shall be posted in at least three public places in the district. The notice shall
32 distinctly state the work to be done.

33 (c) In its discretion, the district board may reject any bids presented and
34 readvertise.

35 (d) In the case of an emergency, the district board may act pursuant to Chapter
36 2.5 (commencing with Section 22050).

37 (e) The district board may, subject to the provisions of ~~Chapter 7 (commencing~~
38 ~~with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code~~ Chapter 5
39 (commencing with Section 45010) of Part 6, require the posting of those bonds it
40 deems desirable as a condition to the filing of a bid or the letting of a contract.

1 (f) Cost records of the work shall be kept in the manner provided in Chapter 1
2 (commencing with Section 4000) of Division 5 of Title 1 of the Government
3 Code.

4 **Comment.** Section 20813 is amended to correct a cross-reference.

5 **Pub. Cont. Code § 20815.3 (amended). Recreation and park districts**

6 SEC. _____. Section 20815.3 of the Public Contract Code is amended to read:

7 20815.3. (a) A district shall publish notice inviting bids for any contract for
8 which competitive bidding is required at least one time in a newspaper of general
9 circulation in the district at least one week before the time specified for receiving
10 bids. The notice shall distinctly state the work to be done.

11 (b) In its discretion, the board of directors may do any of the following:

12 (1) Reject all bids and readvertise.

13 (2) By a four-fifths vote, elect to purchase the materials or supplies in the open
14 market.

15 (3) By a four-fifths vote, elect to construct the building, structure, or
16 improvement by force account.

17 (c) In the case of an emergency, the board of directors may act pursuant to
18 Chapter 2.5 (commencing with Section 22050).

19 (d) The board of directors may, subject to the provisions of ~~Chapter 7~~
20 ~~(commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil~~
21 ~~Code Chapter 5 (commencing with Section 45010) of Part 6,~~ require the posting of
22 those bonds it deems as a condition to the filing of a bid or the letting of a
23 contract.

24 (e) The district shall keep cost records of the work pursuant to Chapter 1
25 (commencing with Section 4000) of Division 5 of Title 1 of the Government
26 Code.

27 **Comment.** Section 20815.3 is amended to correct a cross-reference.

28 **Pub. Cont. Code § 20991 (amended). Los Angeles County Flood Control District**

29 SEC. _____. Section 20991 of the Public Contract Code is amended to read:

30 20991. All contracts for any improvement or unit of work, except as provided in
31 this article, estimated to cost in excess of twenty-five thousand dollars (\$25,000),
32 shall be let to the lowest responsible bidder in the manner provided in this article.
33 The board of supervisors of the district shall advertise by five or more insertions in
34 a daily newspaper of general circulation, or by two or more insertions in a weekly
35 newspaper of general circulation, printed and published in the district, inviting
36 sealed proposals for the construction of the improvement or work. The board shall
37 require the successful bidder or bidders to file with the board good and sufficient
38 bonds, to be approved by the board, conditioned upon the faithful performance of
39 the contract and upon the payment of all claims for labor and material. The bonds
40 shall contain the terms and conditions set forth in ~~Chapter 7 (commencing with~~
41 ~~Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code Chapter 5~~

1 (commencing with Section 45010) of Part 6 and shall be subject to the provisions
2 of that chapter. The board shall have the right to reject any bid not suitable to the
3 best interests of the district. In the event all proposals are rejected or no proposals
4 are received pursuant to advertisement, or the estimated cost of the work does not
5 exceed ten thousand dollars (\$10,000), or the work consists of channel protection,
6 dam protection, temporary work, maintenance work, or emergency work, the
7 board of supervisors may, without advertising for bids, have the work done by
8 force account. Emergency work may also be done by negotiated contract without
9 advertising for bids. In case of an emergency, if notice for bids to let contracts will
10 not be given, the board shall comply with Chapter 2.5 (commencing with Section
11 22050).

12 **Comment.** Section 20991 is amended to correct a cross-reference.

13 **Pub. Cont. Code § 21061 (amended). San Bernardino County Flood Control District**

14 SEC. _____. Section 21061 of the Public Contract Code is amended to read:

15 21061. (a) All contracts for any improvement or unit of work, except as
16 provided in this article, estimated to cost in excess of twenty-five thousand dollars
17 (\$25,000), shall be let to the lowest responsible bidder in the manner provided in
18 this article.

19 (b) The board of supervisors of the district shall advertise by five or more
20 insertions in a daily newspaper of general circulation, or by two or more insertions
21 in a weekly newspaper of general circulation, printed and published in the district,
22 inviting sealed proposals for the construction of the improvement or work. The
23 board shall require the successful bidder or bidders to file with the board good and
24 sufficient bonds, to be approved by the board, conditioned upon the faithful
25 performance of the contract and upon the payment of all claims for labor and
26 material, the bonds to contain the terms and conditions set forth in ~~Chapter 7~~
27 ~~(commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil~~
28 ~~Code Chapter 5 (commencing with Section 45010) of Part 6~~ and to be subject to
29 that chapter.

30 (c) The board may also reject any bid not suitable to the best interests of the
31 district. If all proposals are rejected or no proposals are received pursuant to
32 advertisement therefor, or the work consists of channel protection, dam protection,
33 temporary work, maintenance work, or of emergency work, the board of
34 supervisors may, without advertising for bids, have the work done by force
35 account. Emergency work may also be done by negotiated contract without
36 advertising for bids or requiring bonds. In case of an emergency, if notice for bids
37 to let contracts will not be given, the board shall comply with Chapter 2.5
38 (commencing with Section 22050).

39 (d) The board of supervisors, acting as the board of the district, may, by
40 ordinance, resolution, or board order, authorize the flood control engineer or other
41 county officer to order changes or additions in work being performed under a
42 construction contract. When so authorized, any change or addition in the work

1 shall be ordered in writing by the flood control engineer, or other designated
2 officer, and the extra cost for any change or addition to the work so ordered shall
3 not exceed five thousand dollars (\$5,000) when the total amount of the original
4 contract does not exceed fifty thousand dollars (\$50,000), nor 10 percent of the
5 amount of any original contract that exceeds fifty thousand dollars (\$50,000), but
6 does not exceed two hundred fifty thousand dollars (\$250,000). For contracts
7 whose original cost exceeds two hundred fifty thousand dollars (\$250,000), the
8 extra cost for any change or addition to the work so ordered shall not exceed
9 twenty-five thousand dollars (\$25,000), plus 5 percent of the amount of the
10 original contract costs in excess of two hundred fifty thousand dollars (\$250,000).
11 In no event shall any such change or alteration exceed one hundred fifty thousand
12 dollars (\$150,000).

13 **Comment.** Section 21061 is amended to correct a cross-reference.

14 **Pub. Cont. Code § 21081 (amended). Humboldt County Flood Control District**

15 SEC. _____. Section 21081 of the Public Contract Code is amended to read:

16 21081. All contracts for any improvement or unit of work, when the cost,
17 according to the estimate of the engineer, will exceed five thousand dollars
18 (\$5,000), shall be let to the lowest responsible bidder or bidders in the manner
19 provided in this article. The board shall first determine whether the contract shall
20 be let as a single unit for the whole of the work, or shall be divided into severable
21 parts, or both, according to the best interests of the district. The board shall call for
22 bids and advertise the call by three insertions in a daily newspaper of general
23 circulation or by two insertions in a weekly newspaper of general circulation
24 printed and published in the district inviting sealed proposals for the construction
25 or performance of the improvement or work before any contract is made. The call
26 for bids shall state whether the work is to be performed as a unit or divided into
27 severable specific parts, or both, as stated in the call. The board may let the work
28 by single contract for the whole or it may divide such work into severable parts by
29 separate contracts, as stated in such call, according to the best interests of the
30 district. The board shall require the successful bidder or bidders to file with the
31 board good and sufficient bonds to be approved by the board conditioned upon the
32 faithful performance of the contract and upon the payment of their claims for labor
33 and material, the bonds to contain the terms and conditions set forth in ~~Title 15~~
34 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6
35 (commencing with Section 41010) and to be subject to the provisions of that title.
36 The board shall also have the right to reject any bid. In the event all proposals are
37 rejected or no proposals are received pursuant to advertisement, or the estimated
38 cost of such work does not exceed five thousand dollars (\$5,000), or the work
39 consists of channel protection, maintenance work, or emergency work, the board
40 of supervisors may, without advertising for bids, have the work done by force
41 account. The district may purchase in the open market, without advertising for

1 bids, materials and supplies for use in any work either under contract or by force
2 account.

3 **Comment.** Section 21081 is amended to correct a cross-reference.

4 **Pub. Cont. Code § 21091 (amended). Riverside County Flood Control and Water**

5 **Conservation District**

6 SEC. _____. Section 21091 of the Public Contract Code is amended to read:

7 21091. All contracts for any improvement or unit of work, except as otherwise
8 provided in this act, estimated to cost in excess of fifteen thousand dollars
9 (\$15,000) shall be let to the lowest responsible bidder in the manner provided in
10 this article. The board of supervisors of the district shall advertise by three
11 insertions in a daily newspaper of general circulation or two insertions in a weekly
12 newspaper of general circulation printed and published in the district inviting
13 sealed proposals for the construction of the improvement or work before any
14 contract is made, and may let by contract separately any part of the work or
15 improvement. The board shall require the successful bidder to file with the board
16 good and sufficient bonds to be approved by the board conditioned upon the
17 faithful performance of the contract and upon the payment of their claims for labor
18 and material. The bonds shall contain the terms and conditions set forth in
19 ~~Sections 10223 and 10224 of the Public Contract Code and Section 3248 of the~~
20 ~~Civil Code~~ 10223, 10224, and 45030 and be subject to those sections. The board
21 shall also have the right to reject any bid. If all proposals are rejected or no
22 proposals are received pursuant to advertisement, or where the estimated cost of
23 the work does not exceed fifteen thousand dollars (\$15,000), or the work consists
24 of channel protection, maintenance work, or emergency work, the board of
25 supervisors may, without advertising for bids, have the work done by force
26 account. In case of an emergency, if notice for bids to let contracts will not be
27 given, the board shall comply with Chapter 2.5 (commencing with Section 22050).
28 The district may purchase in the open market, without advertising for bids,
29 materials and supplies for use in any improvement or unit of work either under
30 contract or by force account.

31 **Comment.** Section 21091 is amended to correct a cross-reference.

32 **Pub. Cont. Code § 21101 (amended). San Luis Obispo County Flood Control and Water**

33 **Conservation District**

34 SEC. _____. Section 21101 of the Public Contract Code is amended to read:

35 21101. All contracts for any improvement or unit of work, when the cost,
36 according to the estimate of the engineer, will exceed five thousand dollars
37 (\$5,000), shall be let to the lowest responsible bidder or bidders in the manner
38 provided in this article. The board shall first determine whether the contract shall
39 be let as a single unit for the whole of the work, or shall be divided into parts, or
40 both, according to the best interests of the district. The board shall call for bids and
41 advertise the call by three insertions in a daily newspaper of general circulation or

1 two insertions in a weekly newspaper of general circulation printed and published
2 in the district inviting sealed proposals for the construction or performance of the
3 improvement or work before any contract shall be made. The call for bids shall
4 state whether the work is to be performed as a unit or is to be divided into
5 severable specific parts, or both, as stated in the call. The board may let the work
6 by single contract for the whole as a unit or it may divide the work into severable
7 parts by separate contracts, as stated in the call, according to the best interests of
8 the district. The board shall require the successful bidder or bidders to file with the
9 board good and sufficient bonds to be approved by the board conditioned upon the
10 faithful performance of the contract and upon the payment of their claims for labor
11 and material, the bonds to contain the terms and conditions set forth in ~~Title 15~~
12 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6
13 (commencing with Section 41010) and to be subject to the provisions of that ~~title~~
14 part. The board shall also have the right to reject any bid. In the event all proposals
15 are rejected or no proposals are received pursuant to advertisement, or the
16 estimated cost of the work does not exceed five thousand dollars (\$5,000), or the
17 work consists of channel protection, maintenance work, or emergency work, the
18 board of supervisors may, without advertising for bids, have the work done by
19 force account. In case of an emergency, if notice for bids to let contracts will not
20 be given, the board shall comply with Chapter 2.5 (commencing with Section
21 22050). The district shall have the power to purchase in the open market without
22 advertising for bids, materials and supplies for use in any work either under
23 contract or by force account.

24 **Comment.** Section 21101 is amended to correct a cross-reference.

25 **Pub. Cont. Code § 21111 (amended). Santa Barbara County Water Agency**

26 **SEC. ____.** Section 21111 of the Public Contract Code is amended to read:

27 21111. (a) All contracts for the construction of any unit of work, except as
28 provided in this article, estimated to cost in excess of ten thousand dollars
29 (\$10,000) shall be let to the lowest responsible bidder in the manner provided in
30 this article. The board of directors of the agency shall advertise by three insertions
31 in a daily newspaper of general circulation or two insertions in a weekly
32 newspaper of general circulation published in the agency's jurisdiction inviting
33 sealed proposals for the construction of the work before any contract shall be
34 made, and may let by contract separately any part of the work. The board shall
35 require the successful bidder to file with the board good and sufficient bonds to be
36 approved by the board conditioned upon the faithful performance of the contract
37 and upon the payment of the claims for labor and material. The faithful
38 performance bond shall contain terms and conditions as the board may specify,
39 and the payment bond shall be subject to the provisions of, and shall contain the
40 terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part~~
41 ~~4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010), as
42 applicable. The board shall also have the right to reject any bid, in which case the

1 board may advertise for new bids. In the event no proposals are received pursuant
2 to advertisement, or where the estimated cost of the work does not exceed ten
3 thousand dollars (\$10,000), or the work consists of emergency work, the board of
4 directors by unanimous vote of all members present may, without advertising for
5 bids, have the work done by force account. In case of an emergency, if notice for
6 bids to let contracts will not be given, the board shall comply with Chapter 2.5
7 (commencing with Section 22050). The agency may purchase in the open market,
8 and may authorize the Purchasing Agent of the County of Santa Barbara to
9 purchase, without advertisement for bids, materials and supplies for use in any
10 work either under contract or by force account.

11 (b) If the work to be performed by or on behalf of the agency does not involve
12 an expenditure of ten thousand dollars (\$10,000) or more, or if the work consists
13 of emergency work, the agency may require a faithful performance bond. The
14 agency may require a payment bond on work performed on behalf of the agency
15 which does not involve an expenditure of more than ten thousand dollars
16 (\$10,000).

17 **Comment.** Section 21111 is amended to correct a cross-reference.

18 **Pub. Cont. Code § 21121 (amended). Monterey County Flood Control and Water**
19 **Conservation District**

20 SEC. _____. Section 21121 of the Public Contract Code is amended to read:

21 21121. (a) All contracts for any improvement or unit of work, if the cost
22 according to the estimate of the engineer, exceeds five thousand dollars (\$5,000),
23 shall be let to the lowest responsible bidder or bidders.

24 (b) The board shall first determine whether the contract shall be let as a single
25 unit for the whole of the work, or shall be divided into severable parts, or both,
26 according to the best interests of the agency.

27 (c) The board shall call for bids and advertise the call by three insertions in a
28 daily newspaper of general circulation or by two insertions in a weekly newspaper
29 of general circulation printed and published in the territory of the agency inviting
30 sealed proposals for the construction or performance of the improvement or work
31 before any contract is entered into. The call for bids shall state whether the work is
32 to be performed as a unit or shall be divided into severable specific parts, or both,
33 as stated in the call. The board may let the work by single contract or it may divide
34 the work into severable parts by separate contracts, as stated in the call, according
35 to the best interests of the agency.

36 (d) The board shall require the successful bidder or bidders to file with the board
37 good and sufficient bonds to be approved by the board conditioned upon the
38 faithful performance of the contract and upon the payment of their claims for labor
39 and material in connection with the contract. The bonds shall contain the terms
40 and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of~~
41 ~~Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) and are
42 subject to the provisions of that ~~title~~ part.

1 (e) The board may reject any bid. The board of supervisors may, without
2 advertising for bids, have the work done by force account if any of the following
3 requirements are met:

4 (1) All the projects are rejected.

5 (2) No proposals are received in response to the advertisement.

6 (3) The estimated cost of the work does not exceed five thousand dollars
7 (\$5,000).

8 (4) The work consists of channel protection, maintenance work, or emergency
9 work. In case of an emergency, if notice for bids to let contracts will not be given,
10 the board shall comply with Chapter 2.5 (commencing with Section 22050).

11 (f) The agency may purchase in the open market, without advertising for bids,
12 materials and supplies for use in any work either under contract or by force
13 account.

14 (g) The Monterey County Board of Supervisors may grant to the board of
15 directors, appointed pursuant to Section 49 of the Monterey County Water
16 Resources Agency Act (Chapter 1159 of the Statutes of 1990), any of the powers
17 or duties granted to the Monterey County Board of Supervisors by this section.

18 **Comment.** Section 21121 is amended to correct a cross-reference.

19 **Pub. Cont. Code § 21131 (amended). Sonoma County Flood Control and Water**
20 **Conservation District**

21 SEC. _____. Section 21131 of the Public Contract Code is amended to read:

22 21131. (a) All contracts for the construction of any unit of work, except as
23 provided in this article, estimated to cost in excess of two thousand five hundred
24 dollars (\$2,500) shall be let to the lowest responsible bidder in the manner
25 provided in this article. The board shall advertise by three placements in a daily
26 newspaper of general circulation or two insertions in a weekly newspaper of
27 general circulation published in the district inviting sealed proposals for the
28 construction of the work before any contract is made, and may let by contract
29 separately any part of the work. The board shall require the successful bidder to
30 file with the board good and sufficient bonds to be approved by the board
31 conditioned upon the faithful performance of the contract and upon the payment of
32 the claims for labor and material in connection therewith, the bonds to contain the
33 terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part~~
34 ~~4 of Division 3 of the Civil Code, Part 6 (commencing with Section 41010)~~ and to
35 be subject to the provisions of that ~~title~~ part. The board may reject any bid, in
36 which case the board may advertise for new bids.

37 (b) In the event no proposals are received pursuant to advertisement therefor, or
38 where the work consists of emergency work, the board of directors, by unanimous
39 vote of all members present, may, without advertising for bids, have the work
40 done by force account. In case of an emergency, if notice for bids to let contracts
41 will not be given, the board shall comply with Chapter 2.5 (commencing with
42 Section 22050).

1 (c) The district may purchase in the open market without advertisement for bids,
2 materials and supplies for use in any work either under contract or by force
3 account; provided, however, that materials and supplies for use in any new
4 construction work or improvement, except work authorized and required under
5 circumstances referred to in subdivision (b), may not be purchased if the cost
6 exceeds two thousand five hundred dollars (\$2,500), without advertising for bids
7 and awarding the contract to the lowest responsible bidder.

8 (d) This section does not apply to a contract entered into with the United States
9 or the State of California or other governmental agency under the authority of
10 Section 3 of Chapter 2126 of the Statutes of 1959, or to a contract authorized by a
11 vote of the electorate of the district.

12 (e) The district may rent or otherwise contract for equipment with or without an
13 operator and use it on works of the district, if the contract is approved by the
14 board.

15 **Comment.** Section 21131 is amended to correct a cross-reference.

16 **Pub. Cont. Code § 21141 (amended). Mendocino County Flood Control and Water**
17 **Conservation District**

18 SEC. _____. Section 21141 of the Public Contract Code is amended to read:

19 21141. (a) All contracts for the construction of any unit of work, except as
20 provided in this article, estimated to cost in excess of two thousand dollars
21 (\$2,000) shall be let to the lowest responsible bidder in the manner provided in
22 this article. The board shall advertise by three insertions in a daily newspaper of
23 general circulation or two insertions in a weekly newspaper of general circulation
24 published in the district inviting sealed proposals for the construction of the work
25 before any contract shall be made, and may let by contract separately any part of
26 the work. The board shall require the successful bidder to file with the board good
27 and sufficient bonds to be approved by the board conditioned upon the faithful
28 performance of the contract and upon the payment of the claims for labor and
29 material, the bonds to contain the terms and conditions set forth in ~~Title 15~~
30 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6~~
31 ~~(commencing with Section 41010)~~ and to be subject to the provisions of that ~~title~~
32 ~~part~~. The board shall also have the right to reject any bid, in which case the board
33 may advertise for new bids.

34 (b) In the event no proposals are received pursuant to advertisement, where the
35 estimated cost of the work does not exceed the sum of two thousand dollars
36 (\$2,000), or where the work consists of emergency work, the board of directors,
37 by unanimous vote of all members present, may, without advertising for bids, have
38 the work done by force account. In case of an emergency, if notice for bids to let
39 contracts will not be given, the board shall comply with Chapter 2.5 (commencing
40 with Section 22050).

41 (c) The district may purchase in the open market, without advertisement for
42 bids, materials and supplies for use in any work either under contract or by force

1 account; provided, however, that materials and supplies for use in any new
2 construction work or improvement, except work referred to in subdivision (b),
3 may not be purchased if the cost exceeds two thousand five hundred dollars
4 (\$2,500), without advertising for bids and awarding the contract therefor to the
5 lowest responsible bidder.

6 (d) The provisions of this section have no application to a contract entered into
7 with the United States under the authority of Section 3, or to a contract authorized
8 by a vote of the electorate of the district.

9 **Comment.** Section 21141 is amended to correct a cross-reference.

10 **Pub. Cont. Code § 21151 (amended). Alameda County Flood Control and Water**
11 **Conservation District**

12 SEC. _____. Section 21151 of the Public Contract Code is amended to read:

13 21151. All contracts for any improvement or unit of work when the cost
14 according to the estimate of the engineer will exceed twenty-five thousand dollars
15 (\$25,000), with or without the furnishing of materials or supplies, shall be let to
16 the lowest responsible bidder or bidders in the manner provided in this article.

17 Construction of improvements or works shall not be staged to avoid the bidding
18 process. The board shall first determine whether the contract shall be let as a
19 single unit for the whole of the work, or shall be divided into severable parts, or
20 both, according to the best interests of the district. The board shall call for bids and
21 advertise the call by inviting sealed proposals for the construction or performance
22 of the improvement or work before any contract is made. The board shall invite
23 the bids by publishing a notice of the call for bids pursuant to Section 6062 or
24 6066 of the Government Code in a newspaper of general circulation in the county.
25 The call for bids shall state whether the work is to be performed as a unit or shall
26 be divided into severable specific parts, or both, as stated in the call. The board
27 may let the work by single contract or it may divide the work into severable parts
28 by separate contracts, as stated in the call, according to the best interests of the
29 district. The board shall require the successful bidder or bidders to file with the
30 board good and sufficient bonds to be approved by the board conditioned upon the
31 faithful performance of the contract and upon the payment of their claims for labor
32 and material, the bonds to contain the terms and conditions set forth in ~~Title 15~~
33 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6
34 (commencing with Section 41010) and to be subject to the provisions of that ~~title~~
35 part. The board shall also have the right to reject any bid. In the event the
36 engineer's estimate is twenty-five thousand dollars (\$25,000) or less, or in the
37 event no proposals are received pursuant to advertisement therefor, or in the event
38 the work consists of channel protection or maintenance work, or emergency work,
39 the board of supervisors may, without advertising for bids, have the work done by
40 day labor under the direction of the board, by contract, or by a combination of the
41 two. In case of an emergency, if notice for bids to let contracts will not be given,
42 the board shall comply with Chapter 2.5 (commencing with Section 22050). The

1 district may acquire in the open market without advertising for bids, materials,
2 equipment, and supplies for use in any work or for any other purpose.

3 **Comment.** Section 21151 is amended to correct a cross-reference.

4 **Pub. Cont. Code § 21161 (amended). Santa Clara Valley Water District**

5 SEC. _____. Section 21161 of the Public Contract Code is amended to read:

6 21161. (a) Any improvement or unit of work not performed by district personnel
7 and estimated by the engineer to cost in excess of twenty-five thousand dollars
8 (\$25,000) shall be done by contract. All contracts shall be let to the lowest
9 responsible bidder or bidders in the manner provided in this article. The board
10 shall first determine whether the contract shall be let as a single unit for the whole
11 of the work, or shall be divided into severable parts, or both, according to the best
12 interests of the district. The board shall call for bids and advertise the call by three
13 insertions in a daily newspaper of general circulation or by two insertions in a
14 weekly newspaper of general circulation printed and published in the district
15 inviting sealed proposals for the construction or performance of the improvement
16 or work before any contract is made. The call for bids shall state whether the work
17 is to be performed as a unit for the whole thereof or shall be divided into severable
18 specific parts, or both, as stated in the call. The board may let the work by single
19 contract or it may divide the work into severable parts by separate contracts, as
20 stated in the call, according to the best interests of the district. The board shall
21 require the successful bidder or bidders to file with the board good and sufficient
22 bonds to be approved by the board conditioned upon the faithful performance of
23 the contract and upon the payment of their claims for labor and material, the bonds
24 to contain the terms and conditions set forth in ~~Title 15 (commencing with Section~~
25 ~~3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section
26 41010) and to be subject to the provisions of that ~~title~~ part. The board shall also
27 have the right to reject any bid. In the event all proposals are rejected or no
28 proposals are received pursuant to advertisement, or the estimated cost of the work
29 does not exceed five thousand dollars (\$5,000), or the work consists of channel
30 protection, maintenance work, or emergency work, the board may, without
31 advertising for bids, have the work done by force account. In case of an
32 emergency, if notice for bids to let contracts will not be given, the board shall
33 comply with Chapter 2.5 (commencing with Section 22050). The district may
34 purchase in the open market, without advertising for bids, materials and supplies
35 for use in any work either under contract or by force account.

36 (b) The provisions of this section requiring competitive bidding and the award of
37 contracts to the lowest responsible bidder are inapplicable to the extent the
38 improvement or unit of work is to be performed on its own facilities by a public
39 utility subject to the jurisdiction of the California Public Utilities Commission.

40 **Comment.** Section 21161 is amended to correct a cross-reference.

1 **Pub. Cont. Code § 21171 (amended). Napa County Flood Control and Water Conservation**
2 **District**

3 SEC. _____. Section 21171 of the Public Contract Code is amended to read:

4 21171. (a) All contracts for any improvement or unit of work when the cost,
5 according to the estimate of the engineer, will exceed two thousand dollars
6 (\$2,000), shall be let to the lowest responsible bidder or bidders in the manner
7 provided in this article. The board shall first determine whether the contract shall
8 be let as a single unit for the whole of the work, or shall be divided into severable
9 parts, or both, according to the best interests of the district. The board shall call for
10 bids and advertise the call by three insertions in a daily newspaper of general
11 circulation or by two insertions in a weekly newspaper of general circulation
12 printed and published in the district inviting sealed proposals for the construction
13 or performance of the improvement or work before any contract is made. The call
14 for bids shall state whether the work is to be performed as a unit for the whole
15 thereof or shall be divided into severable specific parts, or both, as stated in the
16 call. The board may let the work by single contract as a unit or it may divide the
17 work into severable parts by separate contracts, as stated in the call, according to
18 the best interests of the district. The board shall require the successful bidder or
19 bidders to file with the board good and sufficient bonds to be approved by the
20 board conditioned upon the faithful performance of the contract and upon the
21 payment of their claims for labor and material, the bonds to contain the terms and
22 conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of~~
23 ~~Division 3 of the Civil Code Part 6 (commencing with Section 41010)~~ and to be
24 subject to the provisions of that ~~title~~ part. The board shall also have the right to
25 reject any bid.

26 (b) In the event all proposals are rejected or no proposals are received pursuant
27 to advertisement, or the estimated cost of the work does not exceed two thousand
28 dollars (\$2,000), or the work consists of channel protection, maintenance work, or
29 emergency work, the board of supervisors may, without advertising for bids, have
30 the work done by force account. In case of an emergency, if notice for bids to let
31 contracts will not be given, the board shall comply with Chapter 2.5 (commencing
32 with Section 22050).

33 (c) The district may purchase in the open market, without advertising for bids,
34 materials and supplies for use in any work either under contract or by force
35 account; provided, however, that materials and supplies for use in any new
36 construction work or improvements, except work referred to in subdivision (b),
37 may not be purchased if the cost exceeds two thousand five hundred dollars
38 (\$2,500), without advertising for bids and awarding the contract to the lowest
39 responsible bidder.

40 **Comment.** Section 21171 is amended to correct a cross-reference.

1 **Pub. Cont. Code § 21181 (amended). Lake County Flood Control and Water Conservation**
2 **District**

3 SEC. _____. Section 21181 of the Public Contract Code is amended to read:

4 21181. All contracts for any improvement or unit of work when the cost
5 according to the estimate of the engineer, will exceed four thousand dollars
6 (\$4,000), shall be let to the lowest responsible bidder or bidders in the manner
7 provided in this article. The board shall first determine whether the contract shall
8 be let as a single unit or shall be divided into severable parts, or both, according to
9 the best interests of the district. The board shall call for bids and advertise the call
10 in the district pursuant to Section 6066 of the Government Code inviting sealed
11 proposals for the construction or performance of the improvement or before any
12 contract is made. The call for bids shall state whether the work is to be performed
13 as a unit or shall be divided into severable specific parts, or both, as stated in the
14 call. The board may let the work by single contract or it may divide the work into
15 severable parts by separate contracts, as stated in the call, according to the best
16 interests of the district. The board shall require the successful bidder or bidders to
17 file with the board good and sufficient bonds to be approved by the board
18 conditioned upon the faithful performance of the contract and upon the payment of
19 their claims for labor and material, the bonds to contain the terms and conditions
20 set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the~~
21 ~~Civil Code Part 6 (commencing with Section 41010)~~ and to be subject to the
22 provisions of that ~~title part~~. The board shall also have the right to reject any bid.

23 (b) In the event no proposals are received pursuant to advertisement or the
24 estimated cost of the work does not exceed four thousand dollars (\$4,000), or the
25 work consists of channel protection, maintenance work, or emergency work, the
26 board of supervisors may, without advertising for bids, have the work done by day
27 labor, under the direction of the board, by contract, or by the combination of the
28 two. In case of an emergency, if notice for bids to let contracts will not be given,
29 the board shall comply with Chapter 2.5 (commencing with Section 22050).

30 (c) The district may acquire in the open market, without advertising for bids,
31 materials, equipment, and supplies for use in any work or for any other purpose;
32 provided, however, that materials and supplies for use in any new construction
33 work or improvement, except work referred to in subdivision (b), may not be
34 purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without
35 advertising for bids and awarding the contract to the lowest responsible bidder.

36 **Comment.** Section 21811 is amended to correct a cross-reference.

37 **Pub. Cont. Code § 21196 (amended). Solano County Water Agency**

38 SEC. _____. Section 21196 of the Public Contract Code is amended to read:

39 21196. (a) All contracts for the construction of any unit of work, except as
40 provided in this article, estimated to cost in excess of two thousand five hundred
41 dollars (\$2,500) shall be let to the lowest responsible bidder in the manner
42 provided in this article. The board of directors of the district shall call for bids and

1 advertise the call by three insertions in a daily newspaper of general circulation or
2 two insertions in a weekly newspaper of general circulation published in the
3 district inviting sealed proposals for the construction of the work before any
4 contract is made, and may let by contract separately any part of the work. The
5 board shall require the successful bidder to file with the board good and sufficient
6 bonds to be approved by the board conditioned upon the faithful performance of
7 the contract and upon the payment of the claims for labor and material, the bonds
8 to contain the terms and conditions set forth in ~~Title 15 (commencing with Section~~
9 ~~3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section
10 41010) and to be subject to the provisions of ~~this title~~ that part. The board shall
11 also have the right to reject any bid, in which case the board may advertise for new
12 bids.

13 (b) In the event no proposals are received pursuant to advertisement, or where
14 the estimated cost of the work does not exceed two thousand five hundred dollars
15 (\$2,500), or the work consists of emergency work, the board of directors by
16 unanimous vote of all members present, may, without advertising for bids, have
17 the work done by force account. In case of an emergency, if notice for bids to let
18 contracts will not be given, the board shall comply with Chapter 2.5 (commencing
19 with Section 22050). The district may purchase in the open market, without
20 advertisement for bids, materials and supplies for use in any work either under
21 contract or by force account.

22 (c) The provisions of this section have no application to a contract entered into
23 with the United States under the authority of the Solano County Flood Control and
24 Water Conservation District Act, or to a contract authorized by a vote of the
25 electorate of the district.

26 **Comment.** Section 21196 is amended to correct a cross-reference.

27 **Pub. Cont. Code § 21212 (amended). Sacramento County Water Agency**

28 SEC. _____. Section 21212 of the Public Contract Code is amended to read:

29 21212. (a) All contracts for the construction of any unit of work, except as
30 provided in this article, estimated to cost in excess of three thousand dollars
31 (\$3,000), shall be let to the lowest responsible bidder in the manner provided in
32 this article. The board of directors of the agency shall advertise pursuant to Section
33 6066 of the Government Code in a newspaper of general circulation published in
34 the agency's jurisdiction inviting sealed proposals for the construction of the work
35 before any contract is made, and may let by contract separately any part of the
36 work. The board shall require the successful bidder to file with the board good and
37 sufficient bonds to be approved by the board conditioned upon the faithful
38 performance of the contract and upon the payment of any claims for labor and
39 material and containing the terms and conditions set forth in ~~Title 15 (commencing~~
40 ~~with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing
41 with Section 41010) and to be subject to the provisions of that ~~title~~ part. The board

1 shall also have the right to reject any bid, in which case the board may advertise
2 for new bids.

3 (b) In the event no proposals are received pursuant to advertisement, or where
4 the estimated cost of the work does not exceed three thousand dollars (\$3,000), or
5 the work consists of emergency work, the board of directors, by unanimous vote
6 of all members present, may, without advertising for bids, have the work done by
7 force account. In case of an emergency, if notice for bids to let contracts will not
8 be given, the board shall comply with Chapter 2.5 (commencing with Section
9 22050).

10 (c) The agency may purchase in the open market without advertisement for bids,
11 materials and supplies for use in any work either under contract or by force
12 account.

13 (d) The provisions of this section have no application to a contract entered into
14 with the United States under the authority of Section 6 of Chapter 10 of the
15 Statutes of the 1952 First Extraordinary Session, or to a contract authorized by a
16 vote of the electorate of the agency.

17 **Comment.** Section 21212 is amended to correct a cross-reference.

18 **Pub. Cont. Code § 21231 (amended). Marin County Flood Control and Water Conservation**
19 **District**

20 SEC. _____. Section 21231 of the Public Contract Code is amended to read:

21 21231. Any improvement or unit of work when the cost, according to the
22 estimate of the engineer, will exceed five thousand dollars (\$5,000), shall be done
23 by contract let to the lowest responsible bidder or bidders in the manner provided
24 in this article. The board shall first determine whether the contract will be let as a
25 single unit, or will be divided into severable parts, or both, according to the best
26 interests of the district. The board shall call for bids and advertise the call pursuant
27 to Section 6066 of the Government Code in the district, inviting sealed proposals
28 for the construction or performance of the improvement or before any contract is
29 made. The call for bids shall state whether the work is to be performed as a unit or
30 shall be divided into separate specific parts, or both, as stated in the call. The
31 board may let the work by single contract or it may divide the work into severable
32 parts by separate contracts, as stated in the call, according to the best interests of
33 the district. The board shall require the successful bidder or bidders to file with the
34 board good and sufficient bonds to be approved by the board conditioned upon the
35 faithful performance of the contract and upon the payment of their claims for labor
36 and material, the bonds to contain the terms and conditions set forth in ~~Title 15~~
37 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6
38 (commencing with Section 41010) and to be subject to the provisions of that ~~title~~
39 part. The board shall also have the right to reject any bid. In the event no proposals
40 are received pursuant to advertisement, or the estimated cost of the work does not
41 exceed five thousand dollars (\$5,000), or the work consists of channel protection,
42 maintenance work, or emergency work, the board of supervisors may, without

1 advertising for bids, have the work done by day labor, under the direction of the
2 board, by contract, or by a combination of the two. In case of an emergency, if
3 notice for bids to let contracts will not be given, the board shall comply with
4 Chapter 2.5 (commencing with Section 22050). The district may acquire in the
5 open market without advertising for bids, materials, equipment and supplies for
6 use in any work or for any other purpose; provided, however, that materials and
7 supplies for use in any new construction work or improvement, except work
8 referred to in the preceding sentence, may not be purchased if the cost exceeds
9 five thousand dollars (\$5,000), without advertising for bids and awarding the
10 contract to the lowest responsible bidder.

11 **Comment.** Section 21231 is amended to correct a cross-reference.

12 **Pub. Cont. Code § 21241 (amended). Contra Costa County**

13 SEC. _____. Section 21241 of the Public Contract Code is amended to read:

14 21241. All contracts for any improvement or unit of work when the cost,
15 according to the estimate of the engineer, will exceed two thousand dollars
16 (\$2,000), shall be let to the lowest responsible bidder or bidders in the manner
17 provided in this article. The board shall first determine whether the contract shall
18 be let as a single unit or shall be divided into severable parts, or both, according to
19 the best interests of the zone. The board shall call for bids and advertise the call
20 pursuant to Section 6066 of the Government Code in the district inviting sealed
21 proposals for the construction or performance of the improvement or work before
22 any contract is made. The call for bids shall state whether the work is to be
23 performed as a unit or shall be divided into severable specific parts, or both, as
24 stated in the call. The board may let the work by single contract or it may divide
25 the work into severable parts by separate contracts, as stated in the call, according
26 to the best interests of the district. The board shall require the successful bidder or
27 bidders to file with the board good and sufficient bonds to be approved by the
28 board conditioned upon the faithful performance of the contract and upon the
29 payment of their claims for labor and material, the bonds to contain the terms and
30 conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of~~
31 ~~Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) and to be
32 subject to the provisions of that ~~title part~~ part. The board shall also have the right to
33 reject any bid. In the event no proposals are received pursuant to advertisement, or
34 the estimated cost of the work does not exceed two thousand dollars (\$2,000), or
35 the work consists of emergency work, the board of supervisors may, without
36 advertising for bids, have the work done by day labor, under the direction of the
37 board, by contract, or by a combination of the two. In case of an emergency, if
38 notice for bids to let contracts will not be given, the board shall comply with
39 Chapter 2.5 (commencing with Section 22050). The board may acquire in the open
40 market, without advertising for bids, materials, equipment, and supplies for use in
41 any work or for any other purpose; provided, however, that materials and supplies
42 for use in any new construction work or improvement, except work referred to in

1 the preceding sentence, may not be purchased if the cost exceeds two thousand
2 five hundred dollars (\$2,500), without advertising for bids and awarding the
3 contract to the lowest responsible bidder.

4 **Comment.** Section 21241 is amended to correct a cross-reference.

5 **Pub. Cont. Code § 21251 (amended). San Benito County Water Conservation and Flood**
6 **Control District**

7 SEC. _____. Section 21251 of the Public Contract Code is amended to read:

8 21251. (a) (1) All contracts for any improvement or unit of work, if the cost
9 according to the estimate of the engineer will exceed thirty thousand dollars
10 (\$30,000), shall be let to the lowest responsible bidder or bidders as provided in
11 this article. The board shall first determine whether the contract shall be let as a
12 single unit or divided into severable parts, or both.

13 (2) All contracts for any improvement or unit of work, if the cost according to
14 the estimate of the engineer is thirty thousand dollars (\$30,000) or less, may be let
15 without advertising for bids in accordance with procedures adopted by the board.

16 (b) The board shall call for bids and advertise the call pursuant to Section 6063
17 of the Government Code in the district, inviting sealed proposals for the
18 construction or performance of the improvement or work before any contract is
19 made. The call for bids shall state whether the work is to be performed as one unit
20 or divided into severable specific parts.

21 (c) The work may be let under a single contract or several contracts, or both, as
22 stated in the call. The board shall require the successful bidder or bidders to file
23 with the board good and sufficient bonds to be approved by the board conditioned
24 upon the faithful performance of the contract and upon the payment of their claims
25 for labor and material. The bonds shall comply with ~~Title 15 (commencing with~~
26 ~~Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with
27 Section 41010). The board may reject any bid.

28 (d) If all proposals are rejected or no proposals are received, or the estimated
29 cost of the work does not exceed five thousand dollars (\$5,000), or the work
30 consists of channel protection, maintenance work, or emergency work, the board
31 may have the work done by force account without advertising for bids. In case of
32 an emergency, if notice for bids to let contracts will not be given, the board shall
33 comply with Chapter 2.5 (commencing with Section 22050).

34 (e) The district may purchase in the open market, without advertising for bids,
35 materials and supplies for use in any work either under contract or by force
36 account.

37 **Comment.** Section 21251 is amended to correct a cross-reference.

38 **Pub. Cont. Code § 21261 (amended). Del Norte County Flood Control District**

39 SEC. _____. Section 21261 of the Public Contract Code is amended to read:

40 21261. All contracts for any improvement or unit of work when the cost,
41 according to the estimate of the engineer, will exceed two thousand dollars

1 (\$2,000), shall be let to the lowest responsible bidder or bidders in the manner
2 provided in this article. The board shall first determine whether the contract shall
3 be let as a single unit for the work, or shall be divided into severable parts, or both,
4 according to the best interests of the district. The board shall call for bids and
5 advertise the call pursuant to Section 6066 of the Government Code in the district
6 inviting sealed proposals for the construction or performance of the improvement
7 or work before any contract is made. The call for bids shall state whether the work
8 is to be performed as a unit or shall be divided into severable specific parts, or
9 both, as stated in the call. The board may let the work by single contract or it may
10 divide the work into severable parts by separate contracts, as stated in the call,
11 according to the best interests of the district. The board shall require the successful
12 bidder or bidders to file with the board good and sufficient bonds to be approved
13 by the board conditioned upon the faithful performance of the contract and upon
14 the payment of their claims for labor and material, the bonds to contain the terms
15 and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of~~
16 ~~Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) and to be
17 subject to the provisions of that ~~title part~~ part. The board shall also have the right to
18 reject any bid. In the event all proposals are rejected or no proposals are received
19 pursuant to advertisement, or the estimated cost of the work does not exceed two
20 thousand dollars (\$2,000), or the work consists of channel protection, maintenance
21 work, or emergency work, the board of supervisors may, without advertising for
22 bids, have the work done by force account. In case of an emergency, if notice for
23 bids to let contracts will not be given, the board shall comply with Chapter 2.5
24 (commencing with Section 22050). The district may purchase in the open market,
25 without advertising for bids, materials and supplies for use in any work either
26 under contract or by force account.

27 **Comment.** Section 21261 is amended to correct a cross-reference.

28 **Pub. Cont. Code § 21271 (amended). Santa Barbara County Flood Control and Water**
29 **Conservation District**

30 SEC. _____. Section 21271 of the Public Contract Code is amended to read:

31 21271. All improvement and units of work to be performed by or for the district
32 shall be performed in accordance with the following procedures and requirements:

33 (a) If the work consists of the protection or maintenance of channels, storm
34 drains, dams or other flood control works, or emergency work, the board of
35 directors may, without advertising for bids therefor, have the work done by day
36 labor under the direction of the board, by contract, or by a combination of the two.
37 In case of an emergency, if notice for bids to let contracts will not be given, the
38 board shall comply with Chapter 2.5 (commencing with Section 22050).

39 (b) If the work consists of the construction of new flood control channels, storm
40 drains, dams, or other unit or units of work, and if the cost of the work, according
41 to the estimate of the engineer, will exceed ten thousand dollars (\$10,000), and if
42 the work is not the type of work referred to in subdivision (a) or (c) of this section,

1 the new construction shall be performed under a contract or contracts which shall
2 be let to the lowest responsible bidder or bidders in the manner provided in
3 subdivision (d) of this section.

4 (c) If the work consists of the maintenance or alteration of existing facilities,
5 including electrical, painting, and roofing work, and if the cost of labor and
6 materials for the work according to the engineer's estimate, will exceed three
7 thousand five hundred dollars (\$3,500), and if the work is not the type of work
8 referred to in subdivision (a) or (b) of this section, the maintenance and alteration
9 work shall be performed under a contract or contracts which shall be let to the
10 lowest responsible bidder or bidders in the manner provided in subdivision (d) of
11 this section.

12 (d) The board shall first determine whether the work shall be let as a single unit
13 or shall be divided into severable parts, or both, according to the best interests of
14 the district. The board shall call for bids and advertise the call pursuant to Section
15 6066 of the Government Code in the district inviting sealed proposals for the
16 construction or performance of the work before any contract is made. The call for
17 bids shall state whether the work is to be performed as a unit or shall be divided
18 into severable, specific parts, or both, as stated in the call. The board may let the
19 work by single contract or it may divide the work into severable parts by separate
20 contracts, as stated in the call, according to the best interests of the district. The
21 board shall require the successful bidder or bidders to file with the board good and
22 sufficient bond to be approved by the board conditioned upon the faithful
23 performance of the contract and upon the payment of the claims for labor and
24 material. The faithful performance bond shall contain the terms and conditions as
25 the board may specify, and the payment bond shall contain the terms and
26 conditions set forth in, and shall be subject to, the provisions of ~~Title 15~~
27 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6
28 (commencing with Section 41010). If the work to be performed on behalf of the
29 district does not involve an expenditure of fifteen thousand dollars (\$15,000) or
30 more, the district may require a faithful performance bond or a payment bond. The
31 board shall also have the right to reject any bid.

32 (e) If no proposals are received pursuant to advertisement, or if the estimated
33 cost of work of the type referred to in subdivision (b) of this section does not
34 exceed ten thousand dollars (\$10,000), or if the estimated cost of work of the type
35 referred to in subdivision (c) of this section does not exceed three thousand five
36 hundred dollars (\$3,500), the board of directors may, without advertising for bids,
37 have the work done by day labor, under the direction of the board, by contract, or
38 by combination of the two. If any change or alteration in a contract awarded under
39 the provisions of this section for work of the type referred to in subdivision (b) or
40 (c) is deemed necessary and the cost does not exceed 10 percent of the original
41 contract price, the board may authorize the contractor to proceed with the change
42 or alteration without the formality of obtaining bids.

1 (f) Notwithstanding the foregoing provisions, the district shall have the power to
2 acquire in the open market, and may authorize the Purchasing Agents of the
3 County of Santa Barbara to acquire in the open market, without advertising for
4 bids, materials, equipment and supplies for use in any work or for any other
5 purpose; provided, however, that materials and supplies for use in any new
6 construction work or improvement, except work referred to in subdivision (a) of
7 this section, may not be purchased without advertising for bids and awarding the
8 contract to the lowest responsible bidder if the cost exceeds two thousand five
9 hundred dollars (\$2,500), unless the purchase is made by the county purchasing
10 agent at the request of the district, in which case the cost shall not exceed six
11 thousand five hundred dollars (\$6,500).

12 **Comment.** Section 21271 is amended to correct a cross-reference.

13 **Pub. Cont. Code § 21311 (amended). San Joaquin County Flood Control and Water**
14 **Conservation District**

15 SEC. _____. Section 21311 of the Public Contract Code is amended to read:

16 21311. (a) All contracts for any improvement or unit of work when the cost,
17 according to the estimate of the engineer, will exceed two thousand dollars
18 (\$2,000), shall be let to the lowest responsible bidder or bidders in the manner
19 provided in this article. The board shall first determine whether the contract shall
20 be let as a single unit, or shall be divided into severable parts, or both, according to
21 the best interests of the district. The board shall call for bids and advertise the call
22 by three insertions in a daily newspaper of general circulation or by two insertions
23 in a weekly newspaper of general circulation printed and published in the district
24 inviting sealed proposals for the construction or performance of the improvement
25 or work before any contract is made. The call for bids shall state whether the work
26 is to be performed as a unit or shall be divided into severable specific parts, or
27 both, as stated in the call. The board may let the work by single contract for the
28 whole as a unit or it may divide the work into severable parts by separate
29 contracts, as stated in the call, according to the best interests of the district. The
30 board shall require the successful bidder or bidders to file with the board good and
31 sufficient bonds to be approved by the board conditioned upon the faithful
32 performance of the contract and upon the payment of their claims for labor and
33 material, the bonds to contain the terms and conditions set forth in ~~Title 15~~
34 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6
35 (commencing with Section 41010) and to be subject to the provisions of that ~~title~~
36 part. The board shall also have the right to reject any bid.

37 (b) In the event no proposals are received pursuant to advertisement, or the
38 estimated cost of the work does not exceed two thousand dollars (\$2,000), or the
39 work consists of channel protection, maintenance work, or emergency work, the
40 board of supervisors may, without advertising for bids, have the work done by day
41 labor, under the direction of the board, by contract, or by a combination of the

1 two. In case of an emergency, if notice for bids to let contracts will not be given,
2 the board shall comply with Chapter 2.5 (commencing with Section 22050).

3 (c) The district may acquire in the open market, without advertising for bids,
4 materials, equipment, and supplies for use in any work or for any other purpose;
5 provided, however, that materials and supplies for use in any new construction
6 work or improvement, except work referred to in subdivision (b), shall not be
7 purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without
8 advertising for bids and awarding the contract to the lowest responsible bidder.

9 **Comment.** Section 21311 is amended to correct a cross-reference.

10 **Pub. Cont. Code § 21321 (amended). Placer County Water Agency**

11 SEC. _____. Section 21321 of the Public Contract Code is amended to read:

12 21321. (a) All contracts for any improvement or unit of work, when the cost
13 according to the estimate of the engineer will exceed thirty thousand dollars
14 (\$30,000), shall be let to the lowest responsible bidder or bidders as provided in
15 this article. The board shall first determine whether the contract shall be let as a
16 single unit, or divided into severable parts. The board shall advertise for bids by
17 three insertions in a daily newspaper of general circulation or by two insertions in
18 a weekly newspaper of general circulation printed and published in the agency's
19 jurisdiction, inviting sealed proposals for the construction or performance of the
20 improvement or work. The call for bids shall state whether the work shall be
21 performed in one unit or divided into parts. The work may be let under a single
22 contract or several contracts, as stated in the call.

23 The board shall require the successful bidders to file with the board good and
24 sufficient bonds to be approved by the board conditioned upon the faithful
25 performance of the contract and upon the payment of their claims for labor and
26 material. The bonds shall comply with ~~Title 15 (commencing with Section 3082)~~
27 ~~of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010).

28 (b) The board may reject any bid. In the event all proposals are rejected or no
29 proposals are received, or the estimated cost of the work does not exceed five
30 thousand dollars (\$5,000), or the work consists of channel protection,
31 maintenance, or emergency work, the board may have the work done by force
32 account without advertising for bids. In case of an emergency, if notice for bids to
33 let contracts will not be given, the board shall comply with Chapter 2.5
34 (commencing with Section 22050). In the event that no proposals are received, or
35 if only one responsive proposal is received, the board may negotiate a contract for
36 construction or performance of the work or improvement or substantially similar
37 work or improvement. However, if only one responsive proposal is received, the
38 contract must be negotiated with the bidder.

39 (c) The agency may purchase in the open market without advertising for bids,
40 materials and supplies for use in any work, either under contract or by force
41 account.

1 (d) Sections 4300 to 4305, inclusive, of the Government Code do not apply to
2 the agency's Middle Fork American River Project.

3 (e) This section applies to all proposals or contracts whether or not received or
4 entered into prior to the effective date of the amendment of this provision made at
5 the 1963 Regular Session of the Legislature.

6 **Comment.** Section 21321 is amended to correct a cross-reference.

7 **Pub. Cont. Code § 21331 (amended). Tehama County Flood Control and Water**
8 **Conservation District**

9 SEC. _____. Section 21331 of the Public Contract Code is amended to read:

10 21331. (a) All contracts for the construction of any unit of work, except as
11 provided in this article, estimated to cost in excess of three thousand five hundred
12 dollars (\$3,500) shall be let to the lowest responsible bidder in the manner
13 provided in this article. The board shall advertise by three insertions in a daily
14 newspaper of general circulation or two insertions in a weekly newspaper of
15 general circulation published in the district inviting sealed proposals for the
16 construction of the work before any contract shall be made, and may let by
17 contract separately any part of the work. The board shall require the successful
18 bidder to file with the board good and sufficient bonds to be approved by the
19 board conditioned upon the faithful performance of the contract and upon the
20 payment of all claims for labor and material, the bonds to contain the terms and
21 conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of~~
22 ~~Division 3 of the Civil Code, Part 6 (commencing with Section 41010)~~ and to be
23 subject to the provisions of that ~~title part~~. The board shall also have the right to
24 reject any bid, in which case the board may advertise for new bids.

25 (b) In the event no proposals are received pursuant to advertisement, where the
26 estimated cost of the work does not exceed five thousand dollars (\$5,000), or
27 where the work consists of emergency work, the board of directors, by unanimous
28 vote of all members present, may, without advertising for bids, have the work
29 done by force account. In case of an emergency, if notice for bids to let contracts
30 will not be given, the board shall comply with Chapter 2.5 (commencing with
31 Section 22050).

32 (c) The district may purchase in the open market, without advertisement for
33 bids, materials and supplies for use in any work either under contract or by force
34 account; provided, however, that materials and supplies for use in any new
35 construction work or improvement, except work referred to in subdivision (b),
36 may not be purchased if the cost exceeds five thousand dollars (\$5,000), without
37 advertising for bids and awarding the contract to the lowest responsible bidder.

38 (d) The provisions of this section have no application to a contract entered into
39 with the United States under the authority of Section 3 of Chapter 1280 of the
40 Statutes of 1957, or to a contract authorized by a vote of the electorate of the
41 district.

42 **Comment.** Section 21331 is amended to correct a cross-reference.

1 **Pub. Cont. Code § 21341 (amended). Shasta County Water Agency**

2 SEC. _____. Section 21341 of the Public Contract Code is amended to read:

3 21341. (a) All contracts for the construction of any unit of work, except as
4 provided in this article, estimated to cost in excess of five thousand dollars
5 (\$5,000) shall be let to the lowest responsible bidder. The board shall advertise by
6 three insertions in a daily newspaper of general circulation or two insertions in a
7 weekly newspaper of general circulation published by the agency inviting sealed
8 proposals for the construction of the work before any contract is made, and may
9 let by contract separately any part of the work. The board shall require the
10 successful bidder to file with the board good and sufficient bonds to be approved
11 by the board conditioned upon the faithful performance of the contract and upon
12 the payment of the claims for labor and material, the bonds to contain the terms
13 and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of~~
14 ~~Division 3 of the Civil Code, Part 6 (commencing with Section 41010)~~ and to be
15 subject to the provisions of that ~~title~~ part. The board shall also have the right to
16 reject any bid, in which case the board may advertise for new bids. In the event no
17 proposals are received pursuant to advertisement or where the estimated cost of
18 the work does not exceed five thousand dollars (\$5,000), or where the work
19 consists of emergency work, the board, by unanimous vote of all members present,
20 may, without advertising for bids, have the work done by force account. In case of
21 an emergency, if notice for bids to let contracts will not be given, the board shall
22 comply with Chapter 2.5 (commencing with Section 22050). The agency may
23 purchase in the open market, without advertisement for bids, materials and
24 supplies for use in any work either under contract or by force account.

25 (b) The provisions of this section have no application to a contract entered into
26 with the United States under the authority of Section 59 of Chapter 1512 of the
27 Statutes of 1957, or to a contract authorized by a vote of the electorate of the
28 agency.

29 **Comment.** Section 21341 is amended to correct a cross-reference.

30 **Pub. Cont. Code § 21351 (amended). Yuba County Water Agency**

31 SEC. _____. Section 21351 of the Public Contract Code is amended to read:

32 21351. All contracts for any improvement or unit of work, when the cost
33 according to the estimate of the engineer will exceed five thousand dollars
34 (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this
35 article. The board shall first determine whether the contract shall be let as a single
36 unit, or divided into severable parts. The board shall advertise for bids by three
37 insertions in a daily newspaper of general circulation or by two insertions in a
38 weekly newspaper of general circulation printed and published by the agency,
39 inviting sealed proposals for the construction or performance of the improvement
40 or work. The call for bids shall state whether the work shall be performed in one
41 unit or divided into parts. The work may be let under a single contract or several
42 contracts, as stated in the call. The board shall require the successful bidders to file

1 with the board good and sufficient bonds to be approved by the board conditioned
2 upon the faithful performance of the contract and upon the payment of their claims
3 for labor and material. The bonds shall comply with ~~Title 15 (commencing with~~
4 ~~Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with
5 Section 41010). The board may reject any bid. In the event all proposals are
6 rejected or no proposals are received, or the estimated cost of the work does not
7 exceed five thousand dollars (\$5,000), or the work consists of channel protection,
8 maintenance work, or emergency work, the board may have the work done by
9 force account without advertising for bids.

10 In case of an emergency, if notice for bids to let contracts will not be given, the
11 board shall comply with Chapter 2.5 (commencing with Section 22050). The
12 board may purchase in the open market without advertising for bids, materials and
13 supplies for use in any work, either under contract or by force account. In
14 awarding any contract or authorizing any work, the board shall comply with the
15 provisions of Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of
16 Division 2 of the Labor Code.

17 **Comment.** Section 21351 is amended to correct a cross-reference.

18 **Pub. Cont. Code § 21361 (amended). Mariposa County Water Agency**

19 SEC. _____. Section 21361 of the Public Contract Code is amended to read:

20 21361. All contracts for any improvement or unit of work, when the cost
21 according to the estimate of the engineer will exceed five thousand dollars
22 (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this
23 article. The board shall first determine whether the contract shall be let as a single
24 unit, or divided into severable parts. The board shall advertise for bids by three
25 insertions in a daily newspaper of general circulation or by two insertions in a
26 weekly newspaper of general circulation printed and published in the agency's
27 jurisdiction, inviting sealed proposals for the construction or performance of the
28 improvement or work. The call for bids shall state whether the work shall be
29 performed in one unit or divided into parts. The work may be let under a single
30 contract or several contracts, as stated in the call. The board shall require the
31 successful bidders to file with the board good and sufficient bonds to be approved
32 by the board conditioned upon the faithful performance of the contract and upon
33 the payment of their claims for labor and material. The bonds shall comply with
34 ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~
35 Part 6 (commencing with Section 41010). The board may reject any bid. In the
36 event all proposals are rejected or no proposals are received, or the estimated cost
37 of the work does not exceed five thousand dollars (\$5,000), or the work consists of
38 channel protection, maintenance work, or emergency work, the board of
39 supervisors may have the work done by force account without advertising for bids.
40 In case of an emergency, if notice for bids to let contracts will not be given, the
41 board shall comply with Chapter 2.5 (commencing with Section 22050). The

1 district may purchase in the open market without advertising for bids, materials
2 and supplies for use in any work, either under contract or by force account.

3 **Comment.** Section 21361 is amended to correct a cross-reference.

4 **Pub. Cont. Code § 21371 (amended). Sutter County Water Agency**

5 SEC. _____. Section 21371 of the Public Contract Code is amended to read:

6 21371. All contracts for any improvement or unit of work, when the cost
7 according to the estimate of the engineer will exceed five thousand dollars
8 (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this
9 article. The board shall first determine whether the contract shall be let as a single
10 unit, or divided into severable parts. The board shall advertise for bids by three
11 insertions in a daily newspaper of general circulation or by two insertions in a
12 weekly newspaper of general circulation printed and published in the agency's
13 jurisdiction, inviting sealed proposals for the construction or performance of the
14 improvement or work. The call for bids shall state whether the work shall be
15 performed in one unit or divided into parts. The work may be let under a single
16 contract or several contracts, as stated in the call. The board shall require the
17 successful bidders to file with the board good and sufficient bonds to be approved
18 by the board conditioned upon the faithful performance of the contract and upon
19 the payment of their claims for labor and material. The bonds shall comply with
20 ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~
21 Part 6 (commencing with Section 41010). The board may reject any bid. In the
22 event all proposals are rejected or no proposals are received, or the estimated cost
23 of the work does not exceed five thousand dollars (\$5,000), or the work consists of
24 emergency work, the board may have the work done by force account without
25 advertising for bids. In case of an emergency, if notice for bids to let contracts will
26 not be given, the board shall comply with Chapter 2.5 (commencing with Section
27 22050). The district may purchase in the open market without advertising for bids,
28 materials and supplies for use in any work, either under contract or by force
29 account.

30 **Comment.** Section 21371 is amended to correct a cross-reference.

31 **Pub. Cont. Code § 21381 (amended). San Mateo County Flood Control District**

32 SEC. _____. Section 21381 of the Public Contract Code is amended to read:

33 21381. All contracts for any improvement or unit of work, except as provided in
34 this article, estimated to cost in excess of five thousand dollars (\$5,000) shall be
35 let to the lowest responsible bidder in the manner provided in this article. The
36 board of supervisors of the district shall advertise by three insertions in a daily
37 newspaper of general circulation or two insertions in a weekly newspaper of
38 general circulation printed and published in the district inviting sealed proposals
39 for the construction of the improvement or work before any contract shall be
40 made, and may let by contract separately any part of said work or improvement.
41 The board shall require the successful bidder to file with the board good and

1 sufficient bonds to be approved by the board conditioned upon the faithful
2 performance of the contract and upon the payment of their claims for labor and
3 material, the bonds to contain the terms and conditions set forth in ~~Title 15~~
4 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6
5 (commencing with Section 41010) and to be subject to the provisions of that ~~title~~
6 part. The board shall also have the right to reject any bid. In the event all proposals
7 are rejected or no proposals are received pursuant to advertisement, or where the
8 estimated cost of the work does not exceed five thousand dollars (\$5,000), or the
9 work consists of channel protection, maintenance work, or emergency work, the
10 board of supervisors may, without advertising for bids, have the work done by
11 force account. In case of an emergency, if notice for bids to let contracts will not
12 be given, the board shall comply with Chapter 2.5 (commencing with Section
13 22050). The district may purchase in the open market without advertising for bids,
14 materials and supplies for use in any work either under contract or by force
15 account.

16 **Comment.** Section 21381 is amended to correct a cross-reference.

17 **Pub. Cont. Code § 21391 (amended). Plumas County Flood Control and Water**
18 **Conservation District**

19 SEC. _____. Section 21391 of the Public Contract Code is amended to read:

20 21391. (a) All contracts for the construction of any unit of work, except as
21 provided in this article, estimated to cost in excess of two thousand dollars
22 (\$2,000) shall be let to the lowest responsible bidder in the manner provided in
23 this article. The board shall advertise by three insertions in a daily newspaper of
24 general circulation or two insertions in a weekly newspaper of general circulation
25 published in the district, inviting sealed proposals for the construction of the work
26 before any contract shall be made, and may let by contract separately any part of
27 the work. The board shall require the successful bidder to file with the board good
28 and sufficient bonds to be approved by the board conditioned upon the faithful
29 performance of the contract and upon the payment of all claims for labor and
30 material, the bonds to contain the terms and conditions set forth in ~~Title 15~~
31 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~, Part 6
32 (commencing with Section 41010) and to be subject to the provisions of that ~~title~~
33 part. The board shall also have the right to reject any and all bids, in which case
34 the board may advertise for new bids.

35 (b) In the event no proposals are received pursuant to advertisement therefor,
36 where the estimated cost of the work does not exceed two thousand dollars
37 (\$2,000), or where the work consists of emergency work necessary in order to
38 protect life and property, the board of directors, by unanimous vote of all members
39 present, may, without advertising for bids, have the work done by force account.
40 In case of an emergency, if notice for bids to let contracts will not be given, the
41 board shall comply with Chapter 2.5 (commencing with Section 22050).

1 (c) The district may purchase in the open market without advertisement for bids,
2 materials and supplies for use in any work either under contract or by force
3 account; provided, however, that materials and supplies for use in any new
4 construction work or improvement, except work referred to in subdivision (b),
5 may not be purchased if the cost exceeds two thousand five hundred dollars
6 (\$2,500), without advertising for bids and awarding the contract to the lowest
7 responsible bidder.

8 (d) The provisions of this section have no application to a contract entered into
9 with the United States under the authority of Section 3 of Chapter 2114 of the
10 Statutes of 1959, or to a contract authorized by a vote of the electorate of the
11 district.

12 **Comment.** Section 21391 is amended to correct a cross-reference.

13 **Pub. Cont. Code § 21401 (amended). Siskiyou County Flood Control and Water**
14 **Conservation District**

15 SEC. _____. Section 21401 of the Public Contract Code is amended to read:

16 21401. (a) All contracts for the construction of any unit of work, except as
17 provided in this article, estimated to cost in excess of two thousand dollars
18 (\$2,000) shall be let to the lowest responsible bidder in the manner provided in
19 this article. The board shall advertise by three insertions in a daily newspaper of
20 general circulation or two insertions in a weekly newspaper of general circulation
21 published in the district inviting sealed proposals for the construction of the work
22 before any contract shall be made, and may let by contract separately any part of
23 the work. The board shall require the successful bidder to file with the board good
24 and sufficient bonds to be approved by the board conditioned upon the faithful
25 performance of the contract and upon the payment of all claims for labor and
26 material, the bonds to contain the terms and conditions set forth in ~~Title 15~~
27 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6~~
28 (commencing with Section 41010) and to be subject to the provisions of that ~~title~~
29 part. The board shall also have the right to reject any bids, in which case the board
30 may advertise for new bids.

31 (b) In the event no proposals are received pursuant to advertisement, where the
32 estimated cost of the work does not exceed two thousand dollars (\$2,000), or
33 where work consists of emergency work, the board of directors, by unanimous
34 vote of all members present, may, without advertising for bids, have the work
35 done by force account. In case of an emergency, if notice for bids to let contracts
36 will not be given, the board shall comply with Chapter 2.5 (commencing with
37 Section 22050).

38 (c) The district may purchase in the open market without advertisement for bids,
39 materials and supplies for use in any work either under contract or by force
40 account; provided, however, that materials and supplies for use in any new
41 construction work or improvement, except work referred to in subdivision (b),
42 may not be purchased if the cost exceeds two thousand five hundred dollars

1 (\$2,500), without advertising for bids and awarding the contract to the lowest
2 responsible bidder.

3 (d) The provisions of this section have no application to a contract entered into
4 with the United States under the authority of Section 3 of Chapter 2121 of the
5 Statutes of 1959, or to a contract authorized by a vote of the electorate of the
6 district.

7 **Comment.** Section 21401 is amended to correct a cross-reference.

8 **Pub. Cont. Code § 21411 (amended). Nevada County Water Agency**

9 SEC. _____. Section 21411 of the Public Contract Code is amended to read:

10 21411. All contracts for any improvement or unit of work, when the cost
11 according to the estimate of the engineer will exceed five thousand dollars
12 (\$5,000) shall be let to the lowest responsible bidder or bidders as provided in this
13 article. The board shall first determine whether the contract shall be let as a single
14 unit, or divided into severable parts. The board shall advertise for bids by three
15 insertions in a daily newspaper of general circulation or by two insertions in a
16 weekly newspaper of general circulation printed and published in the agency's
17 jurisdiction, inviting sealed proposals for the construction or performance of the
18 improvement or work. The call for bids shall state whether the work shall be
19 performed in one unit or divided into parts. The work may be let under a single
20 contract or several contracts, as stated in the call. The board shall require the
21 successful bidders to file with the board good and sufficient bonds to be approved
22 by the board conditioned upon the faithful performance of the contract and upon
23 the payment of their claims for labor and material. The bonds shall comply with
24 ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~
25 Part 6 (commencing with Section 41010). The board may reject any bid. In the
26 event all proposals are rejected or no proposals are received, or the estimated cost
27 of the work does not exceed five thousand dollars (\$5,000), or the work consists of
28 channel protection, maintenance work, or emergency work, the board may have
29 the work done by force account without advertising for bids. In case of an
30 emergency, if notice for bids to let contracts will not be given, the board shall
31 comply with Chapter 2.5 (commencing with Section 22050). In that event a
32 majority vote of all board members shall be required. The board may purchase in
33 the open market, without advertising for bids, materials and supplies for use in any
34 work, either under contract or by force account.

35 **Comment.** Section 21411 is amended to correct a cross-reference.

36 **Pub. Cont. Code § 21421 (amended). Sierra County Flood Control and Water Conservation**
37 **District**

38 SEC. _____. Section 21421 of the Public Contract Code is amended to read:

39 21421. (a) All contracts for the construction of any unit of work, except as
40 provided in this article, estimated to cost in excess of two thousand dollars
41 (\$2,000), shall be let to the lowest responsible bidder in the manner provided in

1 this article. The board shall advertise by three insertions in a daily newspaper of
2 general circulation or two insertions in a weekly newspaper of general circulation
3 published in the district inviting sealed proposals for the construction of the work
4 before any contract shall be made, and may let by contract separately any part of
5 the work. The board shall require the successful bidder to file with the board good
6 and sufficient bonds to be approved by the board conditioned upon the faithful
7 performance of the contract and upon the payment of all claims for labor and
8 material, the bonds to contain the terms and conditions set forth in ~~Title 15~~
9 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6~~
10 (commencing with Section 41010) and to be subject to the provisions of that ~~title~~
11 part. The board shall also have the right to reject any bid, in which case the board
12 may advertise for new bids.

13 (b) In the event no proposals are received pursuant to advertisement, where the
14 estimated cost of the work does not exceed two thousand dollars (\$2,000), or
15 where the work consists of emergency work, the board of directors, by unanimous
16 vote of all members present, may, without advertising for bids, have the work
17 done by force account. In case of an emergency, if notice for bids to let contracts
18 will not be given, the board shall comply with Chapter 2.5 (commencing with
19 Section 22050).

20 (c) The district may purchase in the open market without advertisement for bids,
21 materials and supplies for use in any work either under contract or by force
22 account; provided, however, that materials and supplies for use in any new
23 construction work or improvement, except work referred to in subdivision (b),
24 may not be purchased if the cost exceeds two thousand five hundred dollars
25 (\$2,500), without advertising for bids and awarding the contract to the lowest
26 responsible bidder.

27 (d) The provisions of this section have no application to a contract entered into
28 with the United States under the authority of Section 3 of Chapter 2123 of the
29 Statutes of 1959, or to a contract authorized by a vote of the electorate of the
30 district.

31 **Comment.** Section 21421 is amended to correct a cross-reference.

32 **Pub. Cont. Code § 21431 (amended). Lassen-Modoc County Flood Control and Water**
33 **Conservation District**

34 SEC. _____. Section 21431 of the Public Contract Code is amended to read:

35 21431. (a) All contracts for the construction of any unit of work, except as
36 provided in this article, estimated to cost in excess of two thousand dollars
37 (\$2,000), shall be let to the lowest responsible bidder in the manner provided in
38 this article. The board shall advertise by three insertions in a daily newspaper of
39 general circulation or two insertions in a weekly newspaper of general circulation
40 published in the district inviting sealed proposals for the construction of the work
41 before any contract shall be made, and may let by contract separately any part of
42 the work. The board shall require the successful bidder to file with the board good

1 and sufficient bonds to be approved by the board conditioned upon the faithful
2 performance of the contract and upon the payment of all claims for labor and
3 material, the bonds to contain the terms and conditions set forth in ~~Title 15~~
4 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6~~
5 (commencing with Section 41010) and to be subject to the provisions of that ~~title~~
6 part. The board shall also have the right to reject any bid, in which case the board
7 may advertise for new bids.

8 (b) In the event no proposals are received pursuant to advertisement, where the
9 estimated cost of the work does not exceed two thousand dollars (\$2,000), the
10 board of directors, by unanimous vote of all members present, may without
11 advertising for bids, have the work done by force account. In case of an
12 emergency, if notice for bids to let contracts will not be given, the board shall
13 comply with Chapter 2.5 (commencing with Section 22050).

14 (c) The district may purchase in the open market without advertisement for bids,
15 materials and supplies for use in any work either under contract or by force
16 account; provided, however, that materials and supplies for use in any new
17 construction work or improvement, except work referred to in subdivision (b),
18 may not be purchased if the cost exceeds two thousand five hundred dollars
19 (\$2,500), without advertising for bids and awarding the contract to the lowest
20 responsible bidder.

21 (d) The provisions of this section have no application to a contract entered into
22 with the United States under the authority of Section 3 of Chapter 2127 of the
23 Statutes of 1959, or to a contract authorized by a vote of the electorate of the
24 district.

25 **Comment.** Section 21431 is amended to correct a cross-reference.

26 **Pub. Cont. Code § 21441 (amended). Yuba-Bear River Basins Authority**

27 SEC. _____. Section 21441 of the Public Contract Code is amended to read:

28 21441. (a) All contracts for any improvement or unit of work, when the cost
29 according to the estimate of the engineer will exceed five thousand dollars
30 (\$5,000) shall be let to the lowest responsible bidder or bidders as provided in this
31 article. The board shall first determine whether the contract shall be let as a single
32 unit, or divided into severable parts. The board shall advertise for bids by three
33 insertions in a daily newspaper of general circulation or by two insertions in a
34 weekly newspaper of general circulation printed and published in the authority,
35 inviting sealed proposals for the construction or performance of the improvement
36 work. The call for bids shall state whether the work shall be performed in one unit
37 or divided into parts. The work may be let under a single contract or several
38 contracts, as stated in the call. The board shall require the successful bidders to file
39 with the board good and sufficient bonds to be approved by the board conditioned
40 upon the faithful performance of the contract and upon the payment of their claims
41 for labor and material. The bonds shall comply with ~~Title 15 (commencing with~~
42 ~~Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with

1 Section 41010). The board may reject any bid. In the event all proposals are
2 rejected or no proposals are received, or the estimated cost of the work does not
3 exceed five thousand dollars (\$5,000), or the work consists of channel protection,
4 maintenance work, or emergency work, the board may have the work done by
5 force account without advertising for bids.

6 (b) In case of an emergency, if notice for bids to let contracts will not be given,
7 the board shall comply with Chapter 2.5 (commencing with Section 22050). The
8 authority may purchase in the open market without advertising for bids, materials
9 and supplies for use in any work, either under contract or by force account.

10 **Comment.** Section 21441 is amended to correct a cross-reference. The other changes are
11 technical.

12 **Pub. Cont. Code § 21451 (amended). Amador County Water Agency**

13 SEC. _____. Section 21451 of the Public Contract Code is amended to read:

14 21451. All contracts for any improvement or unit of work, when the cost
15 according to the estimate of the engineer will exceed twelve thousand five hundred
16 dollars (\$12,500), shall be let to the lowest responsible bidder or bidders as
17 provided in this article. The board shall first determine whether the contract shall
18 be let as a single unit or divided into severable parts. The board shall advertise for
19 bids by three insertions in a daily newspaper of general circulation or by two
20 insertions in a weekly newspaper of general circulation printed and published in
21 the agency, inviting sealed proposals for the construction or performance of the
22 improvement or work. The call for bids shall state whether the work shall be
23 performed in one unit or divided into parts. The work may be let under a single
24 contract or several contracts, as stated in the call. The board shall require the
25 successful bidders to file with the board good and sufficient bonds to be approved
26 by the board conditioned upon the faithful performance of the contract and upon
27 the payment of their claims for labor and material. The payment bonds shall
28 comply with ~~Chapter 7 (commencing with Section 3247) of Division 3 of Title 15~~
29 ~~of the Civil Code~~ Chapter 5 (commencing with Section 45010) of Part 6. The
30 board may reject any bid. If all proposals are rejected or no proposals are received,
31 or the estimated cost of the work does not exceed twelve thousand five hundred
32 dollars (\$12,500), or the work consists of channel protection, maintenance work,
33 or emergency work, the board may have the work done by force account without
34 advertising for bids. In case of an emergency, if notice for bids to let contracts will
35 not be given, the board shall comply with Chapter 2.5 (commencing with Section
36 22050). The agency may purchase in the open market without advertising for bids,
37 materials and supplies for use in any work, either under contract or by force
38 account.

39 **Comment.** Section 21451 is amended to correct a cross-reference.

40 **Pub. Cont. Code § 21461 (amended). El Dorado County Water Agency**

41 SEC. _____. Section 21461 of the Public Contract Code is amended to read:

1 21461. All contracts for any improvement or unit of work, when the cost
2 according to the estimate of the engineer will exceed five thousand dollars
3 (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this
4 article. The board shall first determine whether the contract shall be let as a single
5 unit, or divided into severable parts. The board shall advertise for bids by three
6 insertions in a daily newspaper of general circulation or by two insertions in a
7 weekly newspaper of general circulation printed and published in the agency,
8 inviting sealed proposals for the construction or performance of the improvement
9 or work. The call for bids shall state whether the work shall be performed in one
10 unit or divided into parts. The work may be let under a single contract or several
11 contracts, as stated in such call. The board shall require the successful bidders to
12 file with the board good and sufficient bonds to be approved by the board
13 conditioned upon the faithful performance of the contract and upon payment of
14 their claims for labor and material. The bonds shall comply with ~~Title 15~~
15 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6
16 (commencing with Section 41010). The board may reject any and all bids. In the
17 event all proposals are rejected or no proposals are received, or the estimated cost
18 of the work does not exceed five thousand dollars (\$5,000), or the work consists of
19 channel protection, maintenance work, or emergency work, the board of
20 supervisors may have the work done by force account without advertising for bids.
21 In case of an emergency, if notice for bids to let contracts will not be given, the
22 board shall comply with Chapter 2.5 (commencing with Section 22050). The
23 district may purchase in the open market without advertising for bids, materials
24 and supplies for use in any work, either under contract or by force account.

25 **Comment.** Section 21461 is amended to correct a cross-reference.

26 **Pub. Cont. Code § 21491 (amended). Kern County Water Agency**

27 SEC. _____. Section 21491 of the Public Contract Code is amended to read:

28 21491. (a) All contracts for any improvement or unit of work, when the cost
29 according to the estimate of the engineer will exceed ten thousand dollars
30 (\$10,000), shall be let to the lowest responsible bidder or bidders as provided in
31 this article. The board shall first determine whether the contract shall be let as a
32 single unit, or divided into severable parts. The board shall advertise for bids by
33 three insertions in a daily newspaper of general circulation or by two insertions in
34 a weekly newspaper of general circulation printed and published in the agency,
35 inviting sealed proposals for the construction or performance of the improvement
36 or work. The call for bids shall state whether the work shall be performed in one
37 unit or divided into parts. The work may be let under a single contract or several
38 contracts, as stated in such call. The board shall require the successful bidders to
39 file with the board good and sufficient bonds to be approved by the board
40 conditioned upon the faithful performance of the contract and upon the payment of
41 their claims for labor and material. The bonds shall comply with ~~Title 15~~

1 ~~(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6~~
2 ~~(commencing with Section 41010).~~ The board may reject any bid.

3 (b) In the event all proposals are rejected or no proposals are received, or the
4 estimated cost of the work does not exceed ten thousand dollars (\$10,000), or the
5 work consists of channel protection, maintenance work, or emergency work, the
6 board may have the work done by force account without advertising for bids. In
7 case of an emergency, if notice for bids to let contracts will not be given, the board
8 shall comply with Chapter 2.5 (commencing with Section 22050).

9 (c) The agency may purchase in the open market without advertising for bids,
10 materials and supplies for use in any work, either under contract or by force
11 account; provided, however, that materials and supplies for use in any new
12 construction work or improvement, except work referred to in subdivision (b),
13 may not be purchased if the cost exceeds ten thousand dollars (\$10,000), without
14 advertising for bids and awarding the contract to the lowest responsible bidder.

15 **Comment.** Section 21491 is amended to correct a cross-reference.

16 **Pub. Cont. Code § 21501 (amended). Desert Water Agency**

17 SEC. _____. Section 21501 of the Public Contract Code is amended to read:

18 21501. (a) All contracts for any improvement or unit of work, when the cost
19 according to the estimate of the engineer will exceed fifteen thousand dollars
20 (\$15,000), shall be let to the lowest responsible bidder or bidders as provided in
21 this article. The board shall first determine whether the contract shall be let as a
22 single unit, or divided into severable parts. The board shall advertise for bids by
23 three insertions in a daily newspaper of general circulation or by two insertions in
24 a weekly newspaper of general circulation printed and published in the agency,
25 inviting sealed proposals for the construction or performance of the improvement
26 or work. The call for bids shall state whether the work shall be performed in one
27 unit or divided into parts. The work may be let under a single contract or several
28 contracts, as stated in such call. The board shall require the successful bidders to
29 file with the board good and sufficient bonds to be approved by the board
30 conditioned upon the faithful performance of the contract and upon the payment of
31 their claims for labor and material. The bonds shall comply with ~~Chapter 7~~
32 ~~(commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil~~
33 ~~Code Chapter 5 (commencing with Section 45010) of Part 6.~~ The board may reject
34 any and all bids.

35 (b) The board may have work done by force account without advertising for bids
36 or by informal bidding procedures in any of the following situations:

37 (1) All proposals are rejected.

38 (2) No proposals are received.

39 (3) The estimated cost of the work does not exceed fifteen thousand dollars
40 (\$15,000) until January 1, 1989. After January 1, 1989, the estimated cost of the
41 work shall not exceed ten thousand dollars (\$10,000).

42 (4) The work consists of channel protection.

1 (5) The work consists of maintenance work, except that informal bidding
2 procedures may be used only where the estimated cost does not exceed twenty-
3 five thousand dollars (\$25,000).

4 (6) The work consists of emergency work. In case of an emergency, if notice for
5 bids to let contracts will not be given, the board shall comply with Chapter 2.5
6 (commencing with Section 22050).

7 (c) The agency may purchase in the open market without advertising for bids,
8 materials and supplies for use in any work, either under contract or by force
9 account, except that, materials and supplies for use in any new construction work
10 or improvement, except work referred to in subdivision (b), may not be purchased,
11 if the cost exceeds fifteen thousand dollars (\$15,000), without advertising for bids
12 and awarding the contract to the lowest responsible bidder.

13 (d) As used in this section, “informal bidding procedures” means that the board
14 shall, at a minimum, award a contract to the lowest responsible bidder after
15 publishing a notice which generally describes the work to be performed and
16 invites written bids in a newspaper of general circulation in the agency once a
17 week for two successive weeks. The board shall obtain a minimum of three written
18 bids.

19 **Comment.** Section 21501 is amended to correct a cross-reference.

20 **Pub. Cont. Code § 21511 (amended). San Geronio Pass Water Agency**

21 SEC. _____. Section 21511 of the Public Contract Code is amended to read:

22 21511. (a) All contracts for any improvement or unit of work, when the cost
23 according to the estimate of the engineer will exceed fifty thousand dollars
24 (\$50,000), shall be let to the lowest responsible bidder or bidders as provided in
25 this article. The board shall first determine whether the contract shall be let as a
26 single unit or divided into severable parts. The board shall advertise for bids by
27 three insertions in a daily newspaper of general circulation or by two insertions in
28 a weekly newspaper of general circulation printed and published in the agency,
29 inviting sealed proposals for the construction or performance of the improvement
30 or work. The call for bids shall state whether the work shall be performed in one
31 unit or divided into parts. The work may be let under a single contract or several
32 contracts, as stated in the call. The board shall require the successful bidders to file
33 with the board good and sufficient bonds to be approved by the board conditioned
34 upon the faithful performance of the contract and upon the payment of their claims
35 for labor and material. The bonds shall comply with ~~Title 15 (commencing with~~
36 ~~Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with
37 Section 41010). The board may reject any and all bids.

38 (b) In the event all proposals are rejected or no proposals are received, or the
39 estimated cost of the work does not exceed ten thousand dollars (\$10,000), or the
40 work consists of channel protection, maintenance work, or emergency work, the
41 board may have the work done by force account without advertising for bids. In

1 case of an emergency, if notice for bids to let contracts will not be given, the board
2 shall comply with Chapter 2.5 (commencing with Section 22050).

3 (c) The agency may purchase in the open market without advertising for bids,
4 materials and supplies for use in any work, either under contract or by force
5 account. However, materials and supplies for use in any new construction work or
6 improvement, except work referred to in subdivision (b), may not be purchased, if
7 the cost exceeds fifty thousand dollars (\$50,000), without advertising for bids and
8 awarding the contract to the lowest responsible bidder.

9 **Comment.** Section 21511 is amended to correct a cross-reference.

10 **Pub. Cont. Code § 21521 (amended). Alpine County Water Agency**

11 SEC. _____. Section 21521 of the Public Contract Code is amended to read:

12 21521. All contracts for any improvement or unit of work, when the cost
13 according to the estimate of the engineer will exceed five thousand dollars
14 (\$5,000) shall be let to the lowest responsible bidder or bidders as provided in this
15 article. The board shall first determine whether the contract shall be let as a single
16 unit, or divided into severable parts. The board shall advertise for bids by three
17 insertions in a daily newspaper of general circulation or by two insertions in a
18 weekly newspaper of general circulation printed and published in the agency,
19 inviting sealed proposals for the construction or performance of the improvement
20 or work. The call for bids shall state whether the work shall be performed in one
21 unit or divided into parts. The work may be let under a single contract or several
22 contracts, as stated in the call. The board shall require the successful bidders to file
23 with the board good and sufficient bonds to be approved by the board conditioned
24 upon the faithful performance of the contract and upon the payment of their claims
25 for labor and material. The bonds shall comply with ~~Title 15 (commencing with~~
26 ~~Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with
27 Section 41010). The board may reject any bid. In the event all proposals are
28 rejected or no proposals are received, or the estimated cost of the work does not
29 exceed five thousand dollars (\$5,000), or the work consists of channel protection,
30 maintenance work, or emergency work, the board may have the work done by
31 force account without advertising for bids.

32 In case of an emergency, if notice for bids to let contracts will not be given, the
33 board shall comply with Chapter 2.5 (commencing with Section 22050). In that
34 event a majority vote of all board members shall be required. The board may
35 purchase in the open market without advertising for bids, materials and supplies
36 for use in any work, either under contract or by force account.

37 **Comment.** Section 21521 is amended to correct a cross-reference.

38 **Pub. Cont. Code § 21531 (amended). Castaic Lake Water Agency**

39 SEC. _____. Section 21531 of the Public Contract Code is amended to read:

40 21531. (a) The Castaic Lake Water Agency shall have power to prescribe
41 methods for the construction of works and for the letting of contracts for the

1 construction of works, structures, or equipment, or the performance or furnishing
2 of labor, materials, or supplies, necessary or convenient for carrying out any of the
3 purposes of this act or for the acquisition or disposal of any real or personal
4 property; provided, that all contracts for any improvement or unit of work, when
5 the cost according to the estimate of the engineer will exceed five thousand dollars
6 (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this
7 article. The board shall first determine whether the contract shall be let as a single
8 unit or divided into severable parts. The board shall advertise for bids by three
9 insertions in a daily newspaper of general circulation published in the agency or
10 by two insertions in a nondaily newspaper of general circulation published in the
11 agency or, if no newspaper is published in the agency, in any newspaper of general
12 circulation distributed in the agency, inviting sealed proposals for the construction
13 or performance of the improvement or work. The call for bids shall state whether
14 the work shall be performed in one unit or divided into parts. The work may be let
15 under a single contract or several contracts, as stated in the call. The board shall
16 require the successful bidders to file with the board good and sufficient bonds to
17 be approved by the board conditioned upon the faithful performance of the
18 contract and upon the payment of their claims for labor and material. The bonds
19 shall comply with ~~Title 15 (commencing with Section 3082) of Part 4 of Division~~
20 ~~3 of the Civil Code~~ Part 6 (commencing with Section 41010). The board may
21 reject any bid.

22 (b) In the event all proposals are rejected or no proposals are received, or the
23 estimated cost of the work does not exceed five thousand dollars (\$5,000), or the
24 work consists of channel protection, maintenance work, or emergency work, the
25 board may have the work done by force account without advertising for bids. In
26 case of an emergency, if notice for bids to let contracts will not be given. The
27 board shall comply with Chapter 2.5 (commencing with Section 22050).

28 (c) The agency may purchase in the open market without advertising for bids,
29 materials and supplies for use in any work, either under contract or by force
30 account; provided, however, that materials and supplies for use in any new
31 construction work or improvement, except work referred to in subdivision (b),
32 may not be purchased if the cost exceeds five thousand dollars (\$5,000), without
33 advertising for bids and awarding the contract to the lowest responsible bidder.

34 **Comment.** Section 21531 is amended to correct a cross-reference.

35 **Pub. Cont. Code § 21541 (amended). Crestline-Lake Arrowhead Water Agency**

36 SEC. _____. Section 21541 of the Public Contract Code is amended to read:

37 21541. (a) The Crestline-Lake Arrowhead Water Agency shall have power to
38 prescribe methods for the construction of works and for the letting of contracts for
39 the construction of works, structures, or equipment, or the performance or
40 furnishing of labor, materials, or supplies, necessary or convenient for carrying out
41 any of the purposes of this act or for the acquisition or disposal of any real or
42 personal property. However, all contracts for the construction of any improvement

1 or unit of work, when the cost, according to the estimate of the engineer, will
2 exceed twenty-five thousand dollars (\$25,000), shall be let to the lowest
3 responsible bidder or bidders as provided in this article. The board shall first
4 determine whether the contract shall be let as a single unit or divided into
5 severable parts. The board shall advertise for bids by three insertions in a daily
6 newspaper of general circulation or by two insertions in a weekly newspaper of
7 general circulation printed and published in the agency, inviting sealed proposals
8 for the construction or performance of the improvement or work. The call for bids
9 shall state whether the work shall be performed in one unit or divided into parts.
10 The work may be let under a single contract or several contracts, as stated in the
11 call.

12 The board shall require the successful bidders to file with the board good and
13 sufficient bonds to be approved by the board conditioned upon the faithful
14 performance of the contract and upon the payment of their claims for labor and
15 material. The bonds shall comply with ~~Title 15 (commencing with Section 3082)~~
16 ~~of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010).
17 The board may reject any bid.

18 (b) In the event all proposals are rejected or no proposals are received, or the
19 estimated cost of the work does not exceed five thousand dollars (\$5,000), or the
20 work consists of channel protection, maintenance work, or emergency work, the
21 board may have the work done by force account without advertising for bids. In
22 case of an emergency, if notice for bids to let contracts will not be given, the board
23 shall comply with Chapter 2.5 (commencing with Section 22050).

24 (c) The agency may purchase in the open market without advertising for bids,
25 materials and supplies for use in any work, either under contract or by force
26 account. However, materials and supplies for use in any new construction work or
27 improvement, except work referred to in subdivision (b), may not be purchased if
28 the cost exceeds twenty-five thousand dollars (\$25,000), without advertising for
29 bids and awarding the contract to the lowest responsible bidder.

30 **Comment.** Section 21541 is amended to correct a cross-reference.

31 **Pub. Cont. Code § 21572 (amended). Madera County Flood Control and Water**
32 **Conservation Agency**

33 SEC. _____. Section 21572 of the Public Contract Code is amended to read:

34 21572. Any improvement or unit of work, except as provided in this article,
35 estimated to cost in excess of five thousand dollars (\$5,000), shall be done by
36 contract and let to the lowest responsible bidder in the manner provided in this
37 article. The board of directors of the agency shall advertise by three insertions in a
38 daily newspaper of general circulation or two insertions in a weekly newspaper of
39 general circulation published in the agency, inviting sealed proposals for the
40 construction of the work before any contract shall be made, and may let by
41 contract separately any part of the work. The board shall require the successful
42 bidder to file with the board good and sufficient bonds to be approved by the

1 board, conditioned upon the faithful performance of the contract, and upon the
2 payment of the claims for labor and material, the bonds to contain the terms and
3 conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of~~
4 ~~Division 3 of the Civil Code, Part 6 (commencing with Section 41010)~~ and to be
5 subject to the provisions of that ~~title part~~. The board shall also have the right to
6 reject any and all bids, and readvertise for new bids, or by a two-thirds vote may
7 elect to undertake the work by force account. In the event no proposals are
8 received pursuant to advertisement, or where the estimated cost of such work does
9 not exceed five thousand dollars (\$5,000), the board of directors by unanimous
10 vote of all members present may without advertising for bids have the work done
11 by force account. In case of an emergency, if notice for bids to let contracts will
12 not be given, the board shall comply with Chapter 2.5 (commencing with Section
13 22050). The agency may purchase in the open market without advertisement for
14 bids, materials and supplies for use in any work either under contract or by force
15 account.

16 **Comment.** Section 21572 is amended to correct a cross-reference.

17 **Pub. Cont. Code § 21581 (amended). Tulare County Flood Control District**

18 SEC. _____. Section 21581 of the Public Contract Code is amended to read:

19 21581. (a) Any improvement or unit of work when the cost according to the
20 estimate of the engineer will exceed five thousand dollars (\$5,000), shall be done
21 by contract and shall be let to the lowest responsible bidder or bidders in the
22 manner provided in this article. The board shall first determine whether the
23 contract shall be let as a single unit or shall be divided into severable parts, or
24 both, according to the best interests of the district. The board shall call for bids and
25 advertise the call by three insertions in a daily newspaper of general circulation or
26 by two insertions in a weekly newspaper of general circulation printed in the
27 district inviting sealed proposals for the construction or performance of the
28 improvement or work before any contract is made. The call for bids shall state
29 whether the work is to be performed as a unit or shall be divided into severable
30 specific parts, or both, as stated in the call. The board may let the work by single
31 contract for the whole or it may divide the work into severable parts by separate
32 contracts, as stated in the call, according to the best interests of the district. The
33 board shall require the successful bidder or bidders to file with the board a good
34 and sufficient bond to be approved by the board conditioned upon the payment of
35 their claims for labor and material, the bond to contain the terms and conditions
36 set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the~~
37 ~~Civil Code Part 6 (commencing with Section 41010)~~ and to be subject to the
38 provisions of that ~~title part~~. The board shall also have the right to reject any and all
39 bids and readvertise for new bids, or by a two-thirds vote may elect to undertake
40 the work by force account.

41 (b) In the event no proposals are received pursuant to advertisement, or the
42 estimated cost of the work does not exceed five thousand dollars (\$5,000), or the

1 work consists of channel protection, maintenance work, or emergency work, the
2 board of supervisors may, without advertising for bids, have the work done by
3 employees of the district, by day labor, under the direction of the board, by
4 contract, or by any combination of those methods. In case of an emergency, if
5 notice for bids to let contracts will not be given, the board shall comply with
6 Chapter 2.5 (commencing with Section 22050).

7 (c) The district may acquire in the open market without advertising for bids,
8 materials, equipment, and supplies for use in any work or for any other purpose;
9 provided, however, that materials and supplies for use in any new construction
10 work or improvement, except work referred to in subdivision (b), may not be
11 purchased if the cost exceeds five thousand dollars (\$5,000), without advertising
12 for bids and awarding the contract to the lowest responsible bidder.

13 **Comment.** Section 21581 is amended to correct a cross-reference.

14 **Pub. Cont. Code § 21591 (amended). Bighorn Mountains Water Agency**

15 SEC. _____. Section 21591 of the Public Contract Code is amended to read:

16 21591. (a) Any improvement or unit of work, when the cost, according to the
17 estimate of the engineer, will exceed twenty-five thousand dollars (\$25,000), shall
18 be done by contract and shall be let to the lowest responsible bidder or bidders as
19 provided in this article. The board shall first determine whether the contract shall
20 be let as a single unit or divided into severable parts. The board shall advertise for
21 bids by three insertions in a daily newspaper of general circulation or by two
22 insertions in a weekly newspaper of general circulation printed and published in
23 the agency, if there is a newspaper printed and published in the agency, inviting
24 sealed proposals for the construction or performance of the improvement or work.
25 The call for bids shall state whether the work shall be performed in one unit or
26 divided into parts. The work may be let under a single contract or several
27 contracts, as stated in the call. The board shall require the successful bidders to file
28 with the board good and sufficient bonds to be approved by the board conditioned
29 upon the faithful performance of the contract and upon the payment of their claims
30 for labor and material. The bonds shall comply with ~~Title 15 (commencing with~~
31 ~~Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with
32 Section 41010). The board may reject any and all bids and readvertise, or by a
33 two-thirds vote may elect to undertake work by force account.

34 (b) If no proposals are received, or the estimated cost of the work does not
35 exceed twenty-five thousand dollars (\$25,000), or the work consists of channel
36 protection, maintenance work, or emergency work, the board may have the work
37 done by force account without advertising for bids. In case of an emergency, if
38 notice for bids to let contracts will not be given, the board shall comply with
39 Chapter 2.5 (commencing with Section 22050).

40 (c) The agency may purchase in the open market without advertising for bids,
41 materials and supplies for use in any work, either under contract or by force
42 account; provided, however, that materials and supplies for use in any new

1 construction work or improvement, except work referred to in subdivision (b),
2 may not be purchased if the cost exceeds twenty-five thousand dollars (\$25,000),
3 without advertising for bids and awarding the contract to the lowest responsible
4 bidder.

5 **Comment.** Section 21591 is amended to correct a cross-reference.

6 **Pub. Cont. Code § 21601 (amended). Tuolumne County Water Agency**

7 SEC. _____. Section 21601 of the Public Contract Code is amended to read:

8 21601. Any improvement or unit of work, when the cost, according to the
9 estimate of the engineer, will exceed five thousand dollars (\$5,000), shall be done
10 by contract and let to the lowest responsible bidder or bidders as provided in this
11 article. The board shall first determine whether the contract shall be let as a single
12 unit, or divided into severable parts. The board shall advertise for bids by three
13 insertions in a daily newspaper of general circulation or by two insertions in a
14 weekly newspaper of general circulation printed and published in the agency,
15 inviting sealed proposals for the construction or performance of the improvement
16 or work. The call for bids shall state whether the work shall be performed in one
17 unit or divided into parts. The work may be let under a single contract or several
18 contracts, as stated in the call. The board shall require the successful bidders to file
19 with the board good and sufficient bonds to be approved by the board conditioned
20 upon the faithful performance of the contract and upon payment of their claims for
21 labor and material. The bonds shall comply with ~~Title 15 (commencing with~~
22 ~~Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with
23 Section 41010). The board may reject any and all bids and readvertise, or, by a
24 two-thirds vote, may elect to undertake the work by force account. In the event no
25 proposals are received, or the estimated cost of the work does not exceed five
26 thousand dollars (\$5,000), or the work consists of channel protection, maintenance
27 work, or emergency work, the board of supervisors may have the work done by
28 force account without advertising for bids. In case an emergency, if notice for bids
29 to let contracts will not be given, the board shall comply with Chapter 2.5
30 (commencing with Section 22050). The district may purchase in the open market
31 without advertising for bids, materials, and supplies for use in any work, either
32 under contract or by force account.

33 **Comment.** Section 21601 is amended to correct a cross-reference.

34 **Pub. Cont. Code § 21622 (amended). Monterey Peninsula Water Management District**

35 SEC. _____. Section 21622 of the Public Contract Code is amended to read:

36 21622. The board shall require the successful bidder or bidders to file with the
37 board, good and sufficient bonds, to be approved by the board conditioned upon
38 the faithful performance of the contract and upon the payment of their claims for
39 labor and material in connection therewith. Such contracts shall be subject to the
40 provisions of ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of~~
41 ~~the Civil Code~~ Part 6 (commencing with Section 41010).

1 **Comment.** Section 21622 is amended to correct a cross-reference.

2 **Pub. Cont. Code § 21631 (amended). Merced County Flood Control District**

3 SEC. _____. Section 21631 of the Public Contract Code is amended to read:

4 21631. (a) Any improvement or unit of work when the cost, according to the
5 estimate of the engineer, will exceed six thousand five hundred dollars (\$6,500),
6 shall be done by contract and shall be let to the lowest responsible bidder or
7 bidders in the manner provided in this article. The board shall first determine
8 whether the contract shall be let as a single unit, or shall be divided into severable
9 parts, or both, according to the best interests of the district. The board shall call for
10 bids and advertise the call by three insertions in a daily newspaper of general
11 circulation or by two insertions in a weekly newspaper of general circulation
12 printed in the district inviting sealed proposals for the construction or performance
13 of the improvement or work before any contract is made. The call for bids shall
14 state whether the work is to be performed as a unit or shall be divided into
15 severable parts, or both, as stated in the call. The board may let the work by single
16 contract or it may divide the work into severable parts by separate contracts, as
17 stated in the call, according to the best interests of the district. The board shall
18 require the successful bidder or bidders to file with the board a good and sufficient
19 bond, to be approved by the board, conditioned upon the payment of their claims
20 for labor and material. The bond shall contain the terms and conditions set forth in
21 ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~
22 Part 6 (commencing with Section 41010) and ~~to be~~ subject to the provisions of that
23 title part. The board may reject any and all bids and readvertise for new bids, or by
24 a two-thirds vote may elect to undertake the work by force account.

25 (b) If no proposals are received pursuant to advertisement or the estimated cost
26 of the work does not exceed six thousand five hundred dollars (\$6,500), or the
27 work consists of channel protection, maintenance work, or emergency work, the
28 board of supervisors may, without advertising for bids, have the work done by
29 employees of the district, by day labor, under the direction of the board, by
30 contract, or by a combination of those methods. In case of an emergency, if notice
31 for bids to let contracts will not be given, the board shall comply with Chapter 2.5
32 (commencing with Section 22050).

33 (c) The district may acquire in the open market, without advertising for bids,
34 materials, equipment, and supplies for use in any work or for any other purpose;
35 provided, however, that materials and supplies for use in any new construction
36 work or improvement, except that work referred to in subdivision (b), may not be
37 purchased if the cost exceeds six thousand five hundred dollars (\$6,500), without
38 advertising for bids and awarding the contract to the lowest responsible bidder.

39 **Comment.** Section 21631 is amended to correct a cross-reference and make a technical
40 change.

1

STREETS AND HIGHWAYS CODE

2 **Sts. & Hy. Code § 136.5 (amended). Competitive bidding and payment bonds**

3 SEC. _____. Section 136.5 of the Streets and Highways Code is amended to read:

4 136.5. (a) The contracts referred to in Sections 135, 136, and 136.1 are not
5 subject to the State Contract Act (Part 2 (commencing with Section 10100) of
6 Division 2 of the Public Contract Code). Except for emergency work of the type
7 described in subdivision (b), whenever the estimated amount of a contract exceeds
8 two thousand five hundred dollars (\$2,500), it shall be awarded to the lowest
9 responsible bidder, after competitive bidding on any reasonable notice that the
10 department may prescribe. Posting of notice for five days in a public place in the
11 district office within which the work is to be done, or the equipment used, is
12 sufficient. Those contracts shall be subject to the applicable payment bond
13 provisions of ~~Chapter 7 (commencing with Section 3247) of Part 4 of Division 3~~
14 ~~of the Civil Code~~ Chapter 5 (commencing with Section 45010) of Part 6 of
15 Division 2 of the Public Contract Code. The department may require faithful
16 performance bonds when considered necessary. The advertisement for each
17 contract shall state whether or not a bond shall be required.

18 (b) In cases of emergency work necessitated by the imminence or occurrence of
19 a landslide, flood, storm damage, accident, or other casualty, tools or equipment
20 may be rented for a period of not to exceed 60 days without competitive bidding,
21 and the department may waive the requirements of ~~Chapter 7 (commencing with~~
22 ~~Section 3247) of Part 4 of Division 3 of the Civil Code~~ Chapter 5 (commencing
23 with Section 45010) of Part 6 of Division 2 of the Public Contract Code to the
24 extent that a contractor may commence performance of the work under the
25 contract for the rental of tools or equipment prior to filing a payment bond with
26 the department. In that case, no payment shall be made to the contractor until a
27 payment bond covering all work of the contract is filed with the department.

28 **Comment.** Section 136.5 is amended to correct cross-references.